U.S. Securities and Exchange Commission
Equity Market Structure Advisory Committee
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Statement of Thomas Farley, President
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Chair White, Commissioners and Members of the Committee –

I'm here today on behalf of the New York Stock Exchange and, importantly, the 2600 companies that list on the NYSE – none of whose interests are represented on this Committee. The listed companies at the NYSE are responsible for many of the most impactful innovations over the past 225 years. These innovations have improved the lives of American and global citizens. Henry Ford's mass production of the vehicle allowed ambulances to no longer rely on mercurial horses. Thomas Edison's mass production of the light bulb allowed society a safer and more efficient means to light their way. The equity markets are first and foremost a capital formation mechanism that must fuel continued innovation, job growth and quality-of-life improvements for the next 225 years.

To put it bluntly, the markets are failing these listed companies. The listed companies are voting with their feet. The number of public companies in this country is down by half over the past 15 years. I speak to listed company CEO's, CFO's and IRO's every day and they have simple but powerful expectations for the capital markets: first, they wish for transparent trading of their stock and, second, they expect that the SEC and exchanges will regulate the trading of their securities to ensure a level playing field that roots out and punishes rule-breakers.

Incomprehensively, I am here to address the recommendations of Subcommittees that do not represent listed company or listing venue viewpoints. Equally disturbing, the recommendations of the Subcommittees are aimed towards increasing the profits of financial intermediaries while assuring that more trading is done in the dark and that the regulatory authority of exchanges is reduced. These recommendations come after a year in which many of the ATSs that host dark trading have been fined for deceptive practices and other unseemly behavior. In addition, as I speak, we are in the middle of the month with the highest percentage of dark trading in history. These trends should serve as an industry-wide wake-up call that we need to re-focus on the needs of the listed company.

When we received the recommendations of the NMS Subcommittee and Trading Venues Regulation Subcommittee just last week, it was clear that the only thing transparent about the Subcommittee process was that self-interests won the day. Instead of a balanced set of perspectives and recommendations that would bring our industry together, the Subcommittees and the recommendations they produced will pit segments of the industry against one another and further reduce the likelihood of anything ever changing. This process was a lost opportunity.

I want to point out that after acquiring the NYSE, ICE set out to forge a compromise among a cross-section of market participants that wasn't all good for exchanges and wasn't all good for broker-dealers,

but was clearly better for the broader market. Our proposal even included a balanced approach to reducing access fees, mere remnants of which are left in this latest access fee pilot recommendation of the Subcommittee. Most importantly, our balanced proposal was constructed around ***simultaneously*** addressing the unintended, but obvious, consequences of making economic changes in isolation. Some of the members of this Committee led a similar effort in the past. While those efforts were ultimately thwarted by self-interests, we hoped more progress could be made by an SEC-sponsored Committee.

Given the insufficient amount of time we have had to analyze the Subcommittees' recommendations, we will be submitting comprehensive our views for the public file at a later date. However, in response to requests from Commission staff, I will highlight a few issues for consideration.

Access Fee Pilot

Today, many exchanges provide a payment, or rebate, to those parties that leave resting bids and offers on the exchange. This anticipated payment is considered by market participants when posting orders on displayed markets and ultimately leads to better prices, and therefore tighter bid-ask spreads, than would have otherwise been displayed. This access fee pilot proposal would reduce greatly or even eliminate the payment of rebates, which would mean without question that the bid-ask spread on exchanges would widen. This is particularly important because the displayed bid-ask spread establishes the price range for trades in dark venues. And, when displayed spreads are wider, it will result in more dark trading. Simply stated, this access fee pilot will not only ensure that there will be more dark trading, but also that there will be worse prices on exchanges and off exchange.

I have shared this theory with literally dozens of market structure experts throughout the industry, including members of this Committee, and not one person faults this logic. Some people argue that dark venue participants will have less incentive to trade on dark venues for fee avoidance reasons because the fees on exchanges will be lower as part of the pilot. But then nearly all concede that this effect would be negligible or non-existent because dark pools will continue to offer low-cost executions and enjoy less stringent regulatory requirements than exchanges. The fact of the matter is that mandating lower access fees without considering how to incent transparent, regulated trading will result in a much worse marketplace for listed companies and institutional and retail investors.

The real conversation we should have as an industry is to identify not just how to lower the cost of trading for certain segments of participants, but also to identify how we can improve the outcome for investors and capital formation for listed companies. A healthy, public market requires those prices to be displayed to all market participants and investors. It is this transparent and public process that establishes the prices around which every other aspect of the secondary market is built. To encourage that process, we believe those who take the risk of stating their intentions aloud should be rewarded for it, whether they are market makers, institutional investors, retail investors or others, by receiving execution priority over all other market participants. When I was invited to be part of a panel of this Committee a year ago, I was pleased to hear a majority of my panel, which was composed of academics and market participants, agree with these common-sense views and recommend that this Committee consider a plan to encourage transparent price formation on regulated exchanges, commonly referred

to as "trade-at." This is an approach that would meet the listed company wish for transparent trading of their stocks by requiring that trades occur on exchange *unless* they can be done elsewhere at a materially better price or for large size. However, these views, like the views of the listed companies, were discarded by the Subcommittees where these recommendations were conjured up.

In today's fragmented marketplace where investor liquidity has migrated off the transparent exchanges and onto dark venues, it is more important than ever to encourage robust displayed markets. We should be focused on increasing market maker benefits and obligations, not reducing them. It's frankly surprising that reducing market maker incentives in isolation is even being considered in the wake of the market volatility on August 24th. In addition, the access fee pilot recommendations *don't even mention* investors or public companies. And everyone in this room already knows the outcome of such a pilot. We have examples that show the inevitable impact.

- The current so-called "inverted venues," those not paying rebates to liquidity providers, consistently have wider spreads than other venues.
- Nasdaq's access fee pilot, which lowered access fees, resulted in wider spreads and less displayed size.

If the SEC proceeds with this access fee pilot, public companies' stocks will have less displayed liquidity and spreads will widen at a time when off-exchange trading is already at record high levels. Both of these entirely predictable results will mean higher costs for investors buying or selling securities. And these higher investor costs go directly into the pockets of market professionals, many of whom were on the drafting Subcommittee. On NYSE, we have Designated Market Makers who are required to maintain two-sided quotes at the best prices, post meaningful size at depth to prevent rapid price swings, and satisfy all market interest in the open and closing auctions. DMMs have the highest levels of market maker obligations compared to those on any other venue. They perform a service so valued by issuers that it often drives their initial and continued listing decision. Crucially, NYSE requires DMMs to assume this responsibility across a basket of both active and illiquid securities. We do this because the obligations in the illiquid stocks are offset by the incentives received in liquid securities. If, as the Subcommittee recommends, we reduce rebates in liquid securities and don't provide alternative incentives to market makers, smaller companies will be disproportionately disadvantaged.

Trading Venue Regulation

Because I will not be participating in this afternoon's meeting, I will briefly comment on the recommendations of the Trading Venue Regulation Subcommittee. It is unsurprising that a group composed principally of representatives of ATSs and other off-exchange venues would recommend a set of proposals to increase their competitors' costs and liabilities. But I must admit, even I was surprised that after a litany of enforcement actions against ATSs, the Subcommittee literally made no mention of ATSs or of additional disclosure and reporting requirements for dark pools and internalizing broker-dealers.

In addition, many of the Subcommittee members belong to the trade association suing over fee changes made by the NMS Plan of which they seek to change the governance. These Subcommittee members'

firms profit from using the data disseminated by these NMS plans; accordingly, reducing the fees they pay for this data would increase their profits.

Conclusion

We at NYSE believe Chair White constituted this Committee in hopes of receiving expert, technical advice as the Commission pursues holistic NMS reform. We have been critical of the composition of this Committee for excluding listed company, listing venue and retail investor views and involvement in the drafting of recommendations. We have also been critical of the Subcommittees' opaque process, but we remained hopeful that the group would dispassionately advise the Commission on critical issues affecting end investors and listed companies.

The NYSE remains committed to helping the Commission seek balanced recommendations that improve market quality for all market participants. We also remain committed to the idea that an Equity Market Structure Advisory Committee is an effective means of considering market structure reform. Therefore, we urge the SEC to not give up but rather to start anew with a representative committee. The future of our equity markets is critically important and it is not too late to formally include listed company, listing venue and retail representatives on the Committee.