



October 21, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Equity Market Structure Advisory Committee (File No. 265-29)

Dear Mr. Fields:

The Healthy Markets Association¹ thanks the Equity Market Structure Advisory Committee (“EMSAC”) of the Securities and Exchange Commission (“SEC”) for the opportunity to appear and comment at the EMSAC’s first meeting² and for this opportunity to offer suggestions to the EMSAC’s governance and operations.

Our comments today focus on structural deficiencies within the EMSAC’s makeup and governance, which we believe severely undermine the Committee’s efficacy. The EMSAC should be providing insights to the SEC on issues of greatest importance to investors and other market participants. And it should be actively engaged in regular work and meetings. Currently, that is not what the SEC is directing it to do. Since its creation was announced nearly a year and a half ago, the EMSAC has held one meeting, and no significant action items came out of it.

¹ Healthy Markets is a not-for-profit association of institutional investors working together with other market participants to promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. For more information about Healthy Markets or our work, please see <http://www.healthymarkets.org>.

² Dave Lauer, Chairman, Healthy Markets Association, Remarks before the Equity Market Structure Advisory Committee (May 13, 2015), available at <http://www.sec.gov/comments/265-29/26529-15.pdf>.

If the EMSAC is going to be an impactful force for improving market structure for investors and the markets, there must be fundamental changes within the EMSAC charter and the composition of its membership.

To improve the EMSAC's governance and operations, the EMSAC and SEC should collectively move with all due speed to enact the following enhancements:

- Increase representation of issuers and Investors;
- Empower the EMSAC to select its own leadership and reasonably determine its own agenda; and
- Empower the EMSAC to work collaboratively with other Advisory committees such as the Investor Advisory Committee and the CFTC's Technology Advisory Committee.

Importantly, we see nothing in its formational documents to prevent the EMSAC from doing this on its own volition.

Increase Representation of Issuers and Investors

The SEC's notice to create the EMSAC explains that the EMSAC was created "to provide the Commission with diverse perspectives on the structure and operations of the U.S. equities markets" and "created to represent a cross-section of those directly affected by, interested in, and/or qualified to provide advice to the Commission on matters related to equity market structure."³ Yet, the SEC has failed to populate the Committee in a manner that would provide the most constructive assistance to it.

The equity capital markets exist, first and foremost, to match investors with capital to those businesses who need capital to survive and grow (issuers). Yet, the SEC has largely ignored these two—most critical—constituencies. Non-financial issuers are not uniquely represented. Worse, of the 17 members on the EMSAC committee, only two are investors.⁴ The Commission and EMSAC would be well served to include the viewpoints from the issuer and investor perspectives.

Empower EMSAC To Select Its Own Leadership and Determine Its Own Agenda

The EMSAC's charter provides for no self-governance by its members. Unlike the SEC's Investor Advisory Committee, there are no officers, subcommittees, or any other organizational structures. To the contrary, the SEC staff appears to exercise essentially all of the control over every aspect of the EMSAC.

³ See File No. 265-29 ID 2

⁴ Invesco, Ltd and T. Rowe Price Group are represented by Kevin Cronin and Mehmet Kinak, respectively. While we are confident that Messrs. Cronin and Kinak are extremely capable spokesmen for investors, we question whether their voices may be appropriately heard given their extreme minority status on the committee, and whether additional viewpoints (such as from smaller mutual fund and private fund managers) might also be relevant.

This could not have been illustrated more clearly than at the end of the initial meeting where there was no direction as to what was going to happen next, or when. In fact, during the inaugural meeting some committee members suggested forming sub-committees to examine various issues, yet it appears no significant action is likely to be taken on this front. The EMSAC should immediately establish officers, directors, and subcommittees of its choosing—and put them to work.

Most shockingly, the SEC staff appears to control exactly what issues are to be addressed, how, and by whom. The EMSAC is comprised of some of the most experienced and informed individuals in the US capital markets, who span a wide range of viewpoints. A former US Senator, the Chairman and Chief Executive of the predominant Self-Regulatory Organization in the securities markets, and executives of several trading firms and dark pools are all on the Committee. Yet, the SEC appears to be ignoring their thoughts on what issues to cover and how.

We can only assume that the SEC's decision to deprive the EMSAC members of any semblance of self-governance is based in part on an unstated concern over what the Committee might, if left to its own devices, produce. At first blush, given that the SEC appears to have selected for the Committee a disproportionate number of members who financially benefit from some of the most-controversial aspects of the current market structure, we might agree with this concern. However, we believe that the individual members of the EMSAC largely share a commitment to “do the right thing.” We further believe that this risk would be significantly alleviated by better balancing the Committee through the addition of more investors and non-financial issuers.

The SEC also appears to be sending the EMSAC off to work on issues of limited immediate utility. The gap between what the SEC is working on, and what the SEC is directing the EMSAC to work on, is enormous.

For example, most of the equity trading community is currently hyper-focused on ATS transparency issues. This year, the SEC has brought two high-profile cases against dark pools. Two more enforcement cases are reportedly on the horizon. Investors are eager for information to better protect themselves and their clients from abuses. Healthy Markets has even prepared a report, which is attached as Exhibit A, to provide guidance to investors and regulators on how to better protect investors.

For its part, the SEC is reportedly also focused on ATS disclosures, and may be preparing proposals to enhance disclosures. That seems fitting. But wouldn't it make sense to ask the EMSAC what they think of the topic? We believe that both the Commissioners and the SEC staff would benefit from learning what this incredible group of experts the SEC has assembled would have to say on the topic. Instead, the SEC is directing the EMSAC elsewhere—to issues that are far less timely or critically important.

We strongly suggest that the EMSAC members seek to refine the charter and fashion it similar to that of the Investor Advisory Committee.⁵ For a point of reference, the Investor Advisory Committee has:

- Its own elected officers and directors;
- Subcommittees of its own creation;
- meetings that can be called by the Chair of the Committee itself;
- the power to determine the issues it wishes to address; and
- the power to direct the SEC to promptly and publicly assess the Committee's findings and recommendations.⁶

None of that is true for the EMSAC. Given the lack of autonomy, and the significant competition that EMSAC members have for their time, we worry that the EMSAC members may feel disenfranchised and disengage, further dimming the Committee's prospects.

Partner with other Advisory Committees

To further the efficacy of the EMSAC, Healthy Markets strongly suggests that the committee seek input from other like-minded discussions within other committees such as the Investor Advisory Committee, the Advisory Committee on Small and Emerging Companies, and cross agency committees such as the CFTC's Technology Advisory Committee.⁷ Rather than discussing these issues in a vacuum dictated by the Commission, the EMSAC would be well served to request that the Commission gather and share relevant viewpoints from these other committees with the EMSAC. This should be significantly more than just having a short presentation at each other's respective meetings.

One modest step that the Commission could take to improve coordination while also adding an investor perspective would be to include in the EMSAC the Chair of the market structure subcommittee of the Investor Advisory Committee.

⁵ When establishing the Investor Advisory Committee, Congress created leadership positions for the Committee, including positions of Chairman, Vice-Chairman, Secretary, and Assistant Secretary. Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 911. Congress further statutorily dictated that meetings should occur "not less than twice annually, at the call of the Chairman of the Committee; and from time to time, at the call of the Commission." Id. For additional information about its charter, please see <http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-charter.pdf>.

⁶ Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 911. For more information about the Investor Advisory Committee, please see <https://www.sec.gov/spotlight/investor-advisory-committee-2012.shtml>.

⁷ The CFTC first created its Technology Advisory Committee (TAC) in 1999. While it has previously been active, it has not had a meeting in over a year, and for the moment appears to be dormant. We would welcome efforts by the CFTC to increase activity of the TAC. For more information on the TAC, please see <http://www.cftc.gov/About/CFTCCommittees/TechnologyAdvisory/index.htm>.

Conclusion

We vigorously support the lofty goals outlined for the EMSAC by the Chair last year.⁸ Unfortunately, without significant reforms, we hold little hope that the Committee will be able to drive market-structure discussion and analysis—much less reform—in any material way.

Healthy Markets thanks the EMSAC for considering our recommendations to bolster its effectiveness. Should you have any questions or wish to discuss our recommendations in further detail, please do not hesitate to contact me.

Respectfully Submitted,



Tyler E. Gellasch

Executive Director
Healthy Markets Association

⁸ Mary Jo White, Chair, Sec. and Exch. Comm'n, Enhancing Our Equity Market Structure, Address before the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542004312>.