HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

January 3, 2022

Via Electronic Mail

Hon. Gary Gensler, Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Commission Priorities and Equity Market Structure Modernization

Dear Chair Gensler:

The Healthy Markets Association[1] writes to supplement our May 4, 2021 letter to you,[2] and offer suggestions to consider as part of the Commission's efforts at "Equity Market Structure Modernization."[3]

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Eliminate Agency Brokers' Conflicts of Interest

The SEC should:

1. Prohibit brokers acting as agents from accepting and/or keeping any payments for orders they are routing for others;
2. Prohibit brokers acting as agents from considering payments received or fees charged to them (*i.e.*, that are not passed through to their customers) when making routing decisions; and
3. Adopt reforms to the assessment of transaction pricing so that transactions are known, disclosed, and assessed at the time of the trade.[4]

Impose Order-By-Order Decision-Making by Brokers

FINRA has repeatedly emphasized that best execution is based upon having a process reasonably designed to get customers the best prices for securities.

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[1]Healthy Markets Association ("HMA") is a not-for-profit member organization of public pension funds, investment advisers, broker-dealers, exchanges, and market data firms focused on reducing conflicts of interest and improving the transparency, efficiency, and fairness of the capital markets. To learn more about HMA or our members, please see our website at http://healthymarkets.org/about.

[2]Letter from Tyler Gellasch, HMA, to Hon. Gary Gensler, SEC, May 4, 2021, available at https://healthymarkets.org/wp-content/uploads/2021/05/Gary-Gensler-Welcome-5-4-21-1.pdf.

[3]*Regulatory Flexibility Agenda*, SEC, RIN 3235-AM57, *available at* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=3235-AM57.

[4]See, Letter from Tyler Gellasch, HMA, to Hon. Gary Gensler, SEC, Oct. 29, 2021, *available at* https://www.sec.gov/comments/sr-cboeedga-2021-017/srcboeedga2021017-9360012-261666.pdf ("October 2021 Letter"). This would include ensuring that exchange fees and rebates are applied based on past activity, and not future activity, so that they are known at the time of the trade, and can be calculated and reported to the brokers' customers.

Nevertheless, brokers frequently do not make their routing decisions on an order-by-order basis, taking into account the relevant information at the time the order routing decision is being made. The SEC and FINRA should clarify that brokers must route and review execution quality on an order-by-order basis.

Further, the SEC and FINRA should re-iterate that a broker has not necessarily fulfilled its "best execution" obligation by simply providing, or even beating, the National Best Bid and Offer, and that best execution obligations apply to wholesaling broker-dealers that agree to execute customer transactions originating from other firms.

Revise the Order Protection Rule ("OPR")

The SEC should:

1. Revise OPR to impose the burden on brokers to scan all competing venues, evaluate potential execution quality, and route orders to where best prices customers can be obtained; and
2. Ensure that, while the rule should continue to prohibit executions at prices that are inferior to those reasonably available elsewhere, exchanges and other venues are not tasked with routing orders to their competitors.

Trading Increments -- Adopt Market-Wide, Responsible Tick Sizes

The SEC should explicitly permit sub-penny quotations and pricing in regular, fixed increments meeting specified, objective, public criteria, but not permit trading anywhere at different prices (*i.e.*, apply the trading increments evenly to exchanges, ATSs, and internalizers).

Establish Clear Best Execution Standards for Investment Advisers

Building upon the SEC staff's 2018 "Risk Alert" regarding "best execution" for investment advisers, the SEC should adopt clear expectations for what process investment advisers should be expected to undertake to fulfill their best execution obligations. These requirements should include:

1. The establishment of best execution committees that meets on at least a quarterly basis;
2. Initiation of measures and reviews (on a not less than quarterly basis) of execution quality, based on a minimum list of "materially relevant factors";
3. Regular evaluation of broker performance and selection;
4. Periodical reviews (on a not less than annual basis) of best execution policies, procedures, and practices, as well as related disclosures; and
5. Mandated full disclosure of the advisor's best execution policies, procedures, and practices, including all relevant conflicts of interest, soft dollar arrangements, etc.

Modernize Equity Reporting Requirements

The SEC should:

1. Eliminate "price improvement" statistics;
2. Reject efforts to introduce complex and misleading statistics to reflect so-called "size improvement";
3. Update Rule 606 to ensure all investors are provided with sufficient details to determine whether brokers are routing orders in ways that maximize the profits. This should include allowing all retail customers to see detailed routing information for their orders, as well as ensuring that institutional investors can obtain detailed routing information for all of their orders from parent to child-level executions; and
4. Revise and approve FINRA proposal for order routing disclosures for OTC equities.

Retire Misleading "Price Improvement" Statistics

The SEC should:

1. Update Rule 605's reporting requirements to eliminate erroneous claims of "price improvement", including by taking into consideration odd-lot orders and trades; and many mid-point type order types that are currently excluded from the rule; and
2. At a minimum, ensure that all order types and mid-point pricing schemes are included, and measured similarly across market venues.

Improve Quality and Accessibility of Market Data

The SEC should

1. Raise the level of, and standardize, the scrutiny applied to filings related to exchange market data offerings and associated fees, in accordance with the Exchange Act and Commission Rules;
2. Adopt the revisions proposed by HMA in our October 2021 Letter, including,
    a. Providing advance notice to market participants of future immediately effective filings;
    b. Disclosure of all communications between exchanges and market participants regarding filings before the filings are made;
    c. Requiring all transactions-based fees and rebates to be known and disclosed at the time of the trade; and
    d. Eliminating discriminatory (and particularly, volume-based) transaction pricing tiers;
3. Fully implement the rule adopted in Dec. 2020 to improve the content and latency of SIPs, while also introducing competition to the provision of public market data (competing SIPs); and
4. Add essential, basic market data to the CTA/CQ and UTP Plans, including odd-lot orders, depth of book information, and auction information.

Accelerate Improvements to Consolidated Audit Trail (CAT)

The SEC should begin the already overdue process of upgrading this basic regulatory tool with other regulators to reflect all related investment products (including related futures products that may be outside the SEC's jurisdiction) with time-stamped precision necessary to reconstruct the market events.

Study the Impact of Options and Other Equity Derivatives Trading on Stock Prices

In 2021, daily options trading volumes exceeded those for equities for the first time in history. This massive increase in trading volumes has direct implications for not just those trading options, but the markets overall. The Commission should more fully explore the causes and effects of this fundamental change in the markets.

Consider the Definitions, Rights, and Obligations of Market Makers

Market making standards, which are generally left to market venues to develop and enforce, lead to inconsistent expectations for market participants and regulators. The SEC should consider developing a standardized set of expectations and obligations for "market makers" across different markets.

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Conclusion

Thank you for your consideration. Please feel free to have your staff contact me by email at ty@healthymarkets.org or telephone at (202) 909-6138 for any follow up.

Sincerely,

Tyler Gellasch
Executive Director

Cc: Hon. Hester Peirce, Commissioner
Hon. Elad Roisman, Commissioner
Hon. Allison Herren Lee, Commissioner
Hon. Caroline Crenshaw, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets
Robert Cook, President and CEO, FINRA