HMA | HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

April 11, 2025

Hon. Hester M. Peirce, Commissioner
Chair of SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Submission to the Securities and Exchange Commission Crypto Task Force Roundtable - Between a Block and a Hard Place: Tailoring Regulation for Crypto Trading

Dear Commissioner Peirce and Crypto Task Force,

The Healthy Markets Association appreciates the opportunity to appear before you today to discuss the trading of digital assets.

My name is Tyler Gellasch. I am the President and CEO of Healthy Markets Association, a non-profit member organization focused on improving the transparency, efficiency, competitiveness, and fairness of the capital markets. Our members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms.[1]

Every day, we work with chief investment officers, portfolio managers, trading desk heads, operations teams, risk managers, compliance officers, and other professional investment team staffers engaged in the trading process. Our expertise and focus is on market plumbing.[2]

At risk of burying the lede, let me start with our key takeaways:

- ***Writing new rules for crypto trading shouldn't be a "blank slate" exercise.***
- ***The trading of financial assets – whether they are treasuries, corporate debt securities, equities, options, swaps, physical commodities, or digital assets – involves many similar economic functions.***
- ***The high level of competition, efficiency, integrity, and fairness of the US capital markets is because of thoughtful regulation – and not in spite of it – as nearly all capital markets rules were created and revised to address specific market weaknesses and failures.***
- ***Promoting competitive, efficient, high-integrity, and fair digital asset markets will necessitate adopting many similar rules as those imposed on the trading of other financial assets.***

[1] To learn more about HMA, please visit https:\\healthymarkets.org.
[2] HMA has submitted over one-hundred comments on rulemakings and petitions to capital markets regulators and Congress on trading-related policies, copies which are available on our website.

This won't be a shock to anyone – even if it may be a disappointment to some. As I'll explore in greater detail below, many of the leading brokers, market makers, exchanges, and data firms in the digital asset industry are staffed by seasoned veterans from the securities trading markets. So while the digital asset class may be newer, the issues, and frankly, many of the individuals involved are not.

Of course, to the extent that Congress may determine digital assets are not securities, or the SEC uses its exemptive powers to make a similar determination, then I suspect this agency will have limited oversight of the industry. However, to the extent that digital assets remain within the definition of securities or are conditionally exempted by Congress or the SEC, we hope any such exemptions will be conditioned upon compliance with minimum market competition, efficiency, integrity, and fairness requirements.

For guidance on the contours of what should be required, we urge you to start, like many of the folks in the digital asset industry have, with lessons from the equities and commodity derivatives trading markets. Nearly all of the rules in the equities and derivatives trading markets have arisen to address specific problems or crises. For example, the consolidated tapes were created to address massive price dislocations across different trading venues; the Limit Up Limit Down Plan was adopted in response to the May 6, 2010 Flash Crash; the Market Access Rule was in response to risks and manipulative trading arising from unfettered access to our markets with the rise of high-frequency trading; and Regulation SCI was adopted in response to a wave of exchange outages caused by "glitches."

Neither Congress nor the SEC should ignore the many painfully learned lessons from other financial asset markets – or the rules that arose from them. Rather, the SEC should start with those rules as the base text, and then tweak them to address the unique nature of digital assets (for example, with respect to clearing and settlement).

We also wish to emphasize that there is a lack of clear regulatory protections and guidelines for trading in native digital asset markets – such as best execution obligations, conflicts of interests and cross trading rules, and clear custody protections – which are a material barrier for many institutional investors. Some intrepid entities are undoubtedly brushing aside the heightened risks. However, more cautious firms, such as public pensions, endowments and other institutional investors may be effectively compelled to either eschew digital assets altogether or, alternatively, obtain digital asset exposures only through traditional securities products, such as a Bitcoin Exchange Traded Product from a registered investment adviser.

We urge the digital asset industry and this agency to recognize that while digital asset fortunes may favor the bold, so do catastrophic losses. And the digital asset industry has seen a lot of both. Professional investors with fiduciary responsibilities to their customers or beneficiaries generally won't or cannot take those unnecessary risks.

Accordingly, if the SEC is to best promote the competitiveness, efficiency, integrity, and fairness of the markets, it must apply the tried-and-true rules that have arisen from decades, and even centuries, of trading experience in other financial asset markets.

Finally, while far from comprehensive, below I outline five minimum requirements for a healthy, robust native digital asset market structure.

Minimum Requirement #1: Asset Manager Obligations

As with other financial assets, there are investing experts in digital assets. While some investors may choose to invest in digital assets on their own, many others are likely to entrust professionals to manage their digital asset portfolios. Regulators should seek to identify the key functions performed by such asset managers, as well as their risks, and borrow heavily from the existing regulatory regime for registered investment advisers and registered investment companies. This should include the filing of Forms ADV, as well as N-PORT and key fund disclosure forms, ranging from prospectuses to account statements. Below, we outline some key regulatory elements for these asset managers and funds.

1. Registration of Managers and Digital Asset Funds with the Appropriate Regulator.

US capital markets regulators and market participants alike are very accustomed to registration requirements to engage in particular market activities. The Commodity Futures Trading Commission and Securities and Exchange Commission have parallel regimes, and while the details vary, both essentially require professional asset managers to register with the agencies and meet minimum standards. They also both impose obligations on the funds (or commodity pools) managed by those entities. These obligations should be applied to those performing this function for digital assets.

While we generally believe that digital asset managers should be subject to the same requirements as registered investment advisers, and their funds subject to the requirements applicable to registered investment companies, below is a non-exhaustive list of some key elements of an appropriate regulatory framework.

2. Fiduciary Duties.

Common law agency principles, state laws, and Commission rules and guidance clearly impose fiduciary duties upon asset managers of securities.

For example, in 2019, the SEC released a *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, which details the agency's expectations for investment advisers' fiduciary duties of care and loyalty to their customers.[3] Those obligations – which include a duty of best execution – should be explicitly extended to asset managers for digital assets.

3. Custody.

Custodians serve an essential investor protection function in the securities markets, essentially acting as a "check" on the risks posed by an asset manager. Without that check, investors may have limited ability to identify when and how their assets may be otherwise used, put at risk, or lost. The basic custody and protection rules of funds in securities should be extended to funds for digital assets.

4. Operational Resiliency.

Asset managers for registered investment companies are generally expected to have:

- robust operational resilience, including practices for maintaining information security, including to guard against hacks;
- clear disclosures of the operations and risks of their products and services; and
- basic continuity plans, in potentially adverse market or physical environments.

These expectations should be extended to digital asset managers and funds.

5. Know the Customer and Products.

Asset managers of securities are obligated to have a reasonable understanding of their customers, including their identities. The requirements serve multiple purposes, including for appropriate risk management and compliance with fiduciary obligations. They can and should also be used to help execute anti-money laundering policies and procedures. Those same considerations apply in digital assets as they do in securities, and so these expectations should be extended to digital asset managers.

Asset managers of securities are obligated to have a reasonable understanding of products they offer or recommend This obligation should be extended to include digital assets. This obligation could be potentially satisfied by searching on-chain and reputable off-chain sources of information related to the digital assets.

[3] *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, SEC, Rel. No. IA-5248, June 5, 2019, *available at* https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf.

6. Holdings, Valuations, and Performance Disclosures.

Asset managers for registered investment companies and their funds are generally obligated to disclose their holdings, use fair market valuations, and disclose this information as well as performance data in standardized and comparable ways.

Standardized holdings, valuations, and performance disclosures should be mandatory for initial investments and for an ongoing basis for digital asset managers.

7. Fee and Expense Disclosures.

Asset managers for registered investment companies and their funds are generally obligated to disclose their fees and expense information in standardized and comparable ways. Standardized fee and expense disclosures should be mandatory for initial investments and thereafter on an ongoing basis for digital asset managers.

Minimum Requirement #2: Broker and Market Maker Obligations

1. Registration With Appropriate Regulator.

US capital markets regulators and market participants alike are very accustomed to registration requirements to engage in particular market activities. As previously stated, the Commodity Futures Trading Commission and SEC have parallel regimes, and while the details vary, both agencies essentially require professional asset managers to register with the agencies and meet the minimum standards.

Notably, in addition to Commission oversight, securities brokers are obligated to register with the Financial Industry Regulatory Authority and meet FINRA's separate membership and regulatory expectations. Those Self Regulatory Organization-imposed rules are more detailed and prescriptive than the Commission's generalized rules. Those protections – many of which are built upon common law agency principles and business practices that have existed for decades, if not centuries – work to ensure competitiveness, market efficiency, market integrity, and fairness.

Further, given the lack of adequate SEC resources to effectively and timely examine all of its thousands of regulated entities, the SEC cannot reasonably be relied upon to police this new set of market participants without significant new resources.

Accordingly, extending to digital asset brokers and market makers requirements to register with regulators (and FINRA, in particular) is essential. This registration should entail the full panoply of regulatory expectations that apply to traditional securities brokers, but to the extent that the Commission or FINRA are considering modifications to those regimes, below we offer a non-exhaustive list of essential components.

2. Training and Expertise.

Securities brokers are expected to have staff fulfilling essential functions, such as Chief Compliance Officer, and key staff are obligated to have training and pass key FINRA competency examinations of substantive and procedural rules. There is value in having FINRA Series 7 and Series 63 examinations, for example. And simply performing these same or similar functions in digital assets doesn't make that expertise any less essential.

These obligations should be extended to digital asset brokers.

3. Custody and Capital.

Brokers in securities markets are subject to clear customer custody, segregation, and capital rules designed to minimize risks to investors of things they can't reasonably see or manage.

When a retail investor buys a financial asset, they typically focus on the risks of the instrument itself, and not necessarily the risks to them posed by the broker through which they acquired it. Many investors, for example, assume that because a digital asset may be acquired through an affiliate of a registered broker, that their rights will be the same.

There is no credible argument that digital assets somehow pose lesser custody, segregation, or custody risks for customers than traditional securities. In fact, given the prevalence of off-chain trading; lack of consolidated pricing, trading, and holdings information; and complex custody arrangements; these risks are likely heightened for digital assets.

The custody, segregation, and capital obligations of securities brokers should be extended to digital asset brokers.

One particularly confusing area is with respect to government insurance of customer assets. Interestingly, we've seen numerous instances where digital asset firms have claimed that customer assets are subject to protections provided by the Federal Deposit Insurance Corporation or Securities Investor Protection Corporation. In general, that's not the case for digital asset accounts. As SIPC explains on its website, "SIPC protects against the loss of cash and securities – such as stocks and bonds – held by a customer at a financially-troubled

SIPC-member brokerage firm."[4] Digital asset brokers should be subject to the same treatment as other SIPC-members if they are to receive the benefit of the government backstop.

4. Operational Resiliency and Records.

Securities brokers are required to have detailed written supervisory procedures covering nearly every aspect of their business. These procedures not only provide consistent guidance across a firm, but also allow for regulators to identify deficiencies. Digital asset brokers should be compelled to have the same types of comprehensive written supervisory procedures and recordkeeping obligations as securities brokers.

Securities brokers are expected to have informational security and routine maintenance and testing of their systems. In fact, they are required to have detailed business continuity plans. And brokers are not permitted to allow third parties generally unfettered access to the public trading markets, and must instead input operational controls to kill potentially disruptive or abusive trading.

All of these requirements are designed, once again, to protect investors and the markets from issues outside of their control. These obligations should be extended to digital asset brokers.

5. Best Execution and Order Handling.

Long before the SEC and FINRA existed, agents were generally imbued with a fiduciary duty to act in the best interests of their principal when working on their behalf. To modernize those obligations for a modern trading environment and ensure brokers effectively meet these standards, FINRA adopted detailed rules and guidance on order handling and best execution for securities trading.[5]

For example, FINRA noted that,

> [A]ny broker-dealer, when acting as agent on behalf of a customer in a transaction, is under a duty to exercise reasonable care to obtain the most advantageous terms for the customer. In addition, best execution duties also arise when a broker-dealer is trading in a principal capacity with a customer. Broker-dealers that are FINRA members also have best execution obligations pursuant to FINRA Rule 5310.[6]

[4] SIPC, What SIPC Protects, *available at* https://www.sipc.org/for-investors/what-sipc-protects (last viewed Apr. 9, 2025).
[5] FINRA Rule 5310; see also, FINRA, *FINRA Reminds Member Firms of Requirements Concerning Best Execution and Payment for Order Flow*, Reg. Notice 21-23, June 23, 2021, available at https://www.finra.org/rules-guidance/notices/21-23; see also, FINRA, *Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets*, Reg. Notice 15-46, Nov. 20, 2015, *available at* https://www.finra.org/rules-guidance/notices/15-46.
[6] FINRA, Reg. Notice 15-46 (internal citations omitted).

Securities brokers are expected, as part of their best execution analysis, to consider:

> (1) the size of the order;
>
> (2) the trading characteristics of the security involved;
>
> (3) the availability of accurate information affecting choices as to the most favorable market center for execution and the availability of technological aids to process such information; and
>
> (4) the cost and difficulty associated with achieving an execution in a particular market center.[7]

Perhaps most importantly, the best execution obligation for securities brokers under FINRA rules and guidance includes an expectation to exercise "reasonable diligence to ascertain the best market"[8] to trade in for the customer's orders, and to do that, the brokers must actually know what the order and executions look like in various markets for those securities. Nearly a decade ago, FINRA noted that a broker may be violating its duty of best execution, for example, if it uses the slower consolidated tapes to make trading and routing decisions for its customers while using exchanges' faster proprietary data streams to make decisions for itself.[9] In these instances, the differences in time may be measured by fractions of a second that are imperceptible to a human being.

Further, securities brokers are required to look back, and see how good of a job they did for their customers, and change their future practices to adjust for deficiencies.

None of these longstanding, basic protections in trading securities are consistently applied in the trading of digital assets.

To be clear, that's also a major reason why the issue of securities regulation, broker registration, and FINRA membership are such hot button issues for the industry. At root, brokers and market makers' failures to get customers the best prices are where they make a lot of their money.

There's a reason digital asset trading is significantly more profitable per dollar value traded than the more regulated – and competitive, efficient, and fair – equities markets. And it should not be lost on anyone why experts in those more competitive equities markets have been so eagerly jumping into the digital asset trading markets – it's not just significantly less regulated, but it's also much less competitive, efficient, and fair. And their expertise is likely making them very

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[7] FINRA, Reg. Notice 15-46.
[8] FINRA, Reg. Notice 15-46.
[9] FINRA, Reg. Notice 15-46, n.12 (explaining that "[t]he exercise of reasonable diligence to ascertain the best market under prevailing market conditions can be affected by the market data, including specific data feeds, used by a firm. For example, a firm that regularly accesses proprietary data feeds, in addition to the consolidated SIP feed, for its proprietary trading, would be expected to also be using these data feeds to determine the best market under prevailing market conditions when handling customer orders to meet its best execution obligations.").

successful at exploiting the digital asset markets' inefficiencies to extract economic rents. These inefficiencies aren't because of regulation, but rather because of a lack of regulation.

In the US equities markets, the SEC and FINRA have rules to keep investors from generally receiving executions at prices that are worse than the best protected prices on an exchange. Trading firms are competitively fighting over tiny fractions of a penny per share. Bid-ask spreads in many equities are a penny on exchanges – which is only a function of existing SEC rules – but less than that for off-exchange trading. And in equities, the SEC just recently adopted a rule that lowered the fee a registered national securities exchange can charge to access a protected quotation to 10 cents per 100 shares traded. And that inspired a lawsuit.

Meanwhile, if a digital asset investor goes to a broker today and submits an order to buy a digital asset, the broker may not survey the market for better prices. Or the broker may survey the market, give one price to its customer, and take a better price for itself – pocketing the difference.

As we discuss below, there is no regulated, consolidated tape to check. The broker may end up executing the other side of the trade itself, or let a third-party take the other side of the trade, perhaps in return for a kickback. And there is no backstop to ensure that the customer is getting the best available price. While trade-throughs in the equities markets give rise to exception reports and investors firing their brokers, in the digital asset markets, they are all-too-commonplace.

Further, in equities trading, brokers are obligated to provide trade confirmations to their customers, with standardized information. And securities brokers are also obligated by regulators to provide basic disclosures regarding how they route customers' orders, including with customer-specific information for large, not-held orders.[10]

These basic investor and market protections were so noncontroversial in the equities markets that they were adopted by a unanimous vote of the SEC during the first Trump Administration.[11] Similarly, the Commission has subsequently approved FINRA rules related to enhanced order routing disclosures regarding NMS and OTC stocks.[12]

Best execution obligations and trading-related disclosures akin to those imposed on securities brokers should be applied to digital asset brokers.

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[10] See, SEC Rule 606.

[11] *Disclosure of Order Execution Information*, SEC, 83 Fed. Reg. 58338 (Nov. 19, 2018), *available at* https://www.govinfo.gov/content/pkg/FR-2018-11-19/pdf/2018-24423.pdf.

[12] *Order Approving a Proposed Rule Change To Adopt FINRA Rules 6151 (Disclosure of Order Routing Information for NMS Securities) and 6470 (Disclosure of Order Routing Information for OTC Equity Securities)*, SEC, 88 Fed. Reg. 53560 (Aug. 8, 2023), *available at* https://www.govinfo.gov/content/pkg/FR-2023-08-08/pdf/2023-16886.pdf.

6. Know the Customer.

Securities brokers are required to know their customers for a number of reasons. They need to know who the customer is for anti-money laundering purposes, but also to appropriately assess risk tolerances and potential compliance with securities offering restrictions. Different levels of options trading are, by rules, restricted to those who have received significant disclosures and demonstrated capabilities and experience. Brokers are not allowed to simply open their trading pipes to the public securities markets. Rather, they have to protect the markets from potentially erroneous, abusive, or disruptive trading.[13]

All of the reasons why brokers are obligated to know their customers in the securities marketplace apply with equal force in the digital asset markets, and so the obligations – and uses of the information collected – should be the same.

7. Know the Product.

Brokers are obligated to have a reasonable understanding of the products they offer or recommend, or make markets in. This expectation should be extended to digital asset brokers. This obligation could be potentially satisfied by searching on-chain and reputable off-chain sources of information related to the assets. Further, brokers should be required to make this information readily available to investors in a standardized format to allow understanding and comparability.

Notably, this could be modeled on the requirements for brokers seeking to provide automated quotations in OTC equities.[14] Markedly, then-Chairman Jay Clayton secured bipartisan Commission approval for modernizing the rule, arguing that:

> The technological advancements that have taken place since the rule was last amended enable us to require that information in the OTC market be more timely, enabling investors to make better informed investment decisions, and reducing fraud in these markets where retail presence is significant and, unfortunately, pump-and-dump and other frauds are too common.[15]

The digital asset market trades in a remarkably similar manner, and should be subject to similar protections. And digital asset brokers should be subject to rules such as FINRA Rule 6432.

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[13] See, e.g., SEC Rule 15c3-5 (which requires brokers to establish, document, and maintain a system of controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of their customers' market access).
[14] SEC Rule 15c2-11.
[15] Press Release, SEC Adopts Amendments to Enhance Retail Investor Protections and Modernize the Rule Governing Quotations for Over-the-Counter Securities, SEC, Sept. 16, 2020, *available at* https://www.sec.gov/newsroom/press-releases/2020-212 (quoting Jay Clayton).

8. Compensation Disclosures.

As with any market intermediary, compensation should be transparent – to promote competition, efficiencies, integrity, and fairness. Republican and Democratic Commissioners of the SEC have long supported efforts to make broker compensation clear and transparent.

Obviously, for brokers, the compensation often comes in the form of a commission or through collection of a bid-ask spread. But it may also come in the form of compensation from third parties, including exchange rebates or routing incentives from third parties. It may also come from simply trading against the customer.

These rule guidelines are not just for equities. For example, pursuant to rules adopted during the first Trump Administration, FINRA and MSRB have, since 2018, required brokers to provide:

> Disclosed mark-ups and mark-downs must be expressed as both a total dollar amount for the transaction and a percentage of prevailing market price (PMP). In addition, for all retail customer trades in corporate, agency and municipal debt securities (other than municipal fund securities), firms must disclose on the confirmation the time of execution and a security-specific link to the FINRA or MSRB website where additional information about the transaction is available, along with a brief description of the information available on the website.[16]

Digital asset brokers should be obligated to provide customers with detailed information regarding all forms of compensation derived from them in standardized formats that are akin to securities brokers.

Minimum Requirement #3: Trading Venue Obligations

1. Registration and Access to Information and Trading.

The effective oversight of trading venues is essential for maintaining competitive, efficient, fair, and high integrity markets. Trading venues for securities must register as national securities exchanges with the SEC and meet a plethora of requirements, or otherwise qualify for an exemption (and register as an Alternative Trading System, for example).

Exchange rules, including those related to its ownership, operations, access, and costs, must all be consistent with the principles laid out in the Exchange Act, including that they:

[16] FINRA, *Fixed Income Mark-up Disclosure*, *available at* https://www.finra.org/rules-guidance/guidance/reports/2021-finras-examination-and-risk-monitoring-program/fixed-income-markup-disclosure (citing FINRA Rule 2232 and MSRB Rule G-15) (last viewed Apr. 9, 2025).

- "provide for the equitable allocation of reasonable dues, fees, and other charges;"[17]
- not be "designed to permit unfair discrimination";[18]
- "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act;[19] and
- be designed "to protect investors and the public interest.[20]

Those principles are essential to promote competition, efficiency, integrity, and fairness. For ATSs, the Commission has ensured that the venues are operated by registered broker dealers (and are thus subject to FINRA oversight and rules), and while subject to less direct regulation than exchanges, are still subject to material restrictions on potential conflicts of interest. Put simply, equity securities trading venues are registered and overseen by regulators, and that should be true for digital asset trading venues.

2. Operations Transparency and Conflicts.

Registered national securities exchanges are required to disclose their governance, operations, and other key information, including how they provide access to their quotations, and match orders. This information is included in filings with the SEC and in communications with market participants (including ATS subscribers).

Trading venues for digital assets – whether on- or off-chain – should be compelled to share their governance, operations, and other key information, akin to those in equities trading markets.

3. Operational Resiliency.

Trading venues play an essential role in promoting competitive markets, as they centralize orders to match and trade from various market participants.

But because of trading venues' importance, they must also be hyper-vigilant to protect their own resiliency and informational security. Unfortunately, in the digital asset arena, hacks and data leaks are far too common. Often, it is because the systems and security measures are simply not up to snuff, as compared to those adopted by traditional financial institutions.

Similarly, the SEC and FINRA have adopted extensive rules to ensure that registered securities exchanges and brokers (including those that may operate ATSs or act as internalizers) have robust systems. Regulation SCI was adopted – like many other rules – in response to a market crisis wherein key venues had proven to be insufficiently diligent in protecting their own consistent operations. Running a key trading venue in a marketplace is like running an airline.

[17] 15 U.S.C.§ 78f(b)(4).
[18] 15 U.S.C.§ 78f(b)(5).
[19] 15 U.S.C.§ 78f(b)(8).
[20] 15 U.S.C.§ 78f(b)(5).

You simply can't have a crash because of the often market-wide impacts. And with that in mind, the SEC set about making registered national securities exchanges as operationally robust as reasonably possible with the adoption of Reg SCI.[21] While the specific requirements may be onerous in some respects, the gestalt of the regime is to protect the whole of the markets from the lack of adequate care by key players. For securities brokers, as discussed before, operational resiliency includes detailed business continuity plans. Again the regulatory intention is to protect other market participants from the inadequacies and failures of entities over which they have no control. These risks may be heightened, not lowered, in many digital assets, where trading may be heavily concentrated on one or a small handful of trading venues.

Lastly, customer order information can move markets, and can be easily misused – even if the information relates to long-ago trading. Unfortunately, over the past decade, we have seen equities ATSs and internalizers misuse their customers' confidential order information, or otherwise not sufficiently safeguard it.[22]

Operational resiliency obligations should be extended to all digital asset trading venues, whether centralized or decentralized.

4. Market Integrity and Stability Safeguards.

The SEC has directly adopted and directed self-regulatory organizations to adopt a collection of market integrity and stability rules that dramatically improve the competitiveness, efficiency, integrity, and fairness of the markets, including the Market Access Rule,[23] Position Limits, and the Limit Up Limit Down Plan.

For example, as FINRA explains, the Market Access Rule:

> requires firms with market access or that provide market access to their customers to "appropriately control the risks associated with market access so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets and the stability of the financial system."[24]

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[21] *Regulation Systems Compliance and Integrity*, SEC, 79 Fed. Reg. 72252 (Dec. 5, 2014), *available at* https://www.govinfo.gov/content/pkg/FR-2014-12-05/pdf/2014-27767.pdf.

[22] *See, e.g.,* Press Release, *SEC Charges ITG With Operating Secret Trading Desk and Misusing Dark Pool Subscriber Trading Information*, SEC, (Aug. 12, 2015); *see also, In the Matter of Credit Suisse Securities (USA) LLC*, SEC, Exch. Act Rel. No. 77062, (Jan. 31, 2016); Complaint, *SEC v. Virtu Financial Inc. and Virtu Americas LLC*, Civil Action No. 1:23-cv-8072, (S.D.N.Y. 2024), *available at* https://www.sec.gov/files/litigation/complaints/2023/comp-pr2023-176.pdf.

[23] Exchange Act Rule 15c3-5.

[24] *2022 Report on FINRA's Examination and Risk Monitoring Program*, FINRA, at 48 (Feb. 2022), *available at* https://www.finra.org/sites/default/files/2022-02/2022-report-finras-examination-risk-monitoring-program.pdf.

FINRA has similarly identified a number of considerations that brokers should consider when assessing the rule, including whether the broker:

> has "reasonably designed risk-management controls and WSPs to manage the financial, regulatory or other risks associated with this business activity";
>
> If "highly automated," seeks to to "manage and deploy technology changes for systems associated with market access and what controls does it use, such as kill switches, to monitor and respond to aberrant behavior by trading algorithms or other impactful market-wide events"; and
>
> appropriately adjusts "credit limit thresholds for customers, including institutional customers (whether temporary or permanent)."[25]

Like most of the SEC's rules, the Limit Up Limit Down Plan ("LULD") was adopted in response to a market crisis. On May 6, 2010, the market experienced a "Flash Crash" – plunging around 1000 points (or 9%) within 15 minutes, and then mostly recovering over the next several minutes. After extensive investigations into the causes, market participants, exchanges, the SEC, and CFTC all worked collaboratively to understand what happened, and craft solutions to address the regulatory weaknesses.

The SEC explained that it was "concerned that events such as those that occurred on May 6, 2010 could seriously undermine the integrity of the U.S. markets."[26] After initially adopting a pilot for single-stock circuit breakers, the exchanges (with the support of market participants) filed to create a market-wide LULD mechanism.

The SEC approved the LULD in 2012 on a pilot basis, and made it permanent during the first Trump Administration.[27] As constructed, the Limit Up Limit Down Plan "is designed to prevent trades in NMS Stocks from occurring outside specified price bands, which are set at a percentage level above and below the average reference price of a security over the preceding five-minute period."[28]

These types of protections for market integrity and stability should be extended to digital assets.

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[25] *Id.*

[26] *Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.*, SEC, Exch. Act Rel. No. 85623, Apr. 11, 2019, *available at* https://www.sec.gov/files/rules/sro/nms/2019/34-85623.pdf.

[27] *Id.*

[28] Limit Up Limit Down Plan, available at https://www.luldplan.com/ (last viewed Apr. 10, 2025).

Minimum Requirement #4: Market Trading and Holdings Transparency

1. Consolidated Public Tape of Orders and Executions.

For a market to be truly competitive, buyers and sellers should be able to see the prices for orders and executions. In equities, the consolidated tape plans collect and disseminate order and trade related information to the public in fractions of a second. This decades-old system is constantly being improved, and the Commission has – on a bipartisan basis – continued to push this public access to information. These regulated data streams also include off-exchange trading.

These tapes – and the private market competitors offered by exchanges and off-exchange trading venues – serve as a principal mechanism for brokers to fulfill their best execution obligations. If comprehensive order and trade information isn't publicly available, then brokers and other market intermediaries (including venues) will be able to continue to offer inferior trade execution quality to their customers.

For digital assets, all trading – both on- and off-chain – should be reported and timely disseminated to the marketplace via a well-regulated data stream or streams. There could be competitive, alternative data streams, like the Commission has directed for the reforms to the equity markets tapes. But there must be a comprehensive trading price and volume reference for investors, brokers, and other intermediaries.

2. Position Reporting by Significant Holders.

Market integrity and prudent risk management depend upon market participants knowing whether, and who, may have a significant interest in a financial asset. In general, financial markets can be much more easily manipulated by large holders. That is part of the reason why the SEC and CFTC have position limits for their markets.

And the SEC also has detailed rules requiring disclosure of equities securities holders. Regulators have also imposed short selling disclosures and reporting obligations.

Further, large financial asset position holders may themselves concentrate significant risks that may impact other parties. For example, Bill Huang's opaque derivative positions in several public equity securities led to not only the collapse of Archegos, but also significant market

losses and volatility to innocent third parties.[29] Put simply, large concentrations of an asset can lead to market stress, and in times of stress, can lead to severe losses and market collapses.

Further, these risks are acutely prevalent in digital asset positions, where we have repeatedly seen instances of large holders in particular assets engaging in activities that may undermine the rights or values of the digital asset positions of others–including by changing fundamental characteristics of the digital asset itself.

Position reporting should be extended to trading in digital assets. As with the other recommendations we make, these rules should apply to both on- and off-chain transactions and holdings.

Minimum Requirement #5: Adequate Regulatory Oversight

1. Entities Must Be Registered and Subject to Examination and Enforcement.

As referenced above, regulation cannot be just by conduct, but rather of the entities materially engaged in market activities, whether as a digital asset manager, digital asset broker, digital asset exchange, or something else. The Commission and the rest of the marketplace know the economic functions well, and can tailor specific compliance expectations to meet fundamental variances for digital assets (such as with respect to custody and transfer agent roles).

Further, the SEC and FINRA maintain processes and standards for conduct for registered persons, and can essentially protect the markets and investors from known bad actors. This can only reasonably be accomplished through a registration-based regime.

Entity-level regulation is also essential to ensure initial and ongoing compliance, as well as adequate recordkeeping to allow for informative examinations and potential enforcement. Also, in the absence of expansion of Section 31 fees to the Commission, registration costs could serve as an important funding source for effective oversight.

[29] Erik Schatzker, Sridhar Natarajan, and Katherine Burton, *Bill Hwang Had $20 Billion, Then Lost It All in Two Days*, Bloomberg, Apr. 8, 2021, *available at* https://www.bloomberg.com/news/features/2021-04-08/how-bill-hwang-of-archegos-capital-lost-20-billion-in-two-days.

2. Digital Asset Markets Must Pay for Their Oversight.

There are currently thousands of registered investment advisers and brokers subject to SEC oversight, as well as dozens of exchanges and dark trading venues. The Commission and FINRA are well positioned to add to this collection, but they must have the resources to do it.

The SEC's mission keeps expanding as the markets grow and assets, and asset classes, diversify. Unfortunately, the SEC's current funding structure is dependent upon Section 31 fees. To the extent that the SEC and FINRA have any role in overseeing the digital asset markets, the market participants in digital assets should bear those costs.

US public equities market participants who may not participate in these other markets should not be compelled to continue to subsidize oversight of other markets. We don't repurpose the Federal Reserve System's budget or the CFTC's budget to pay for equities markets trading, and we shouldn't keep forcing public equity investors to keep paying for digital asset market oversight.[30]

Conclusion

The SEC's approach of ignoring the digital asset markets wasn't good. Its response to then – years later – simply bring enforcement actions against digital asset firms for failing to comply with the securities laws has proven ineffective both as a legal and policy matter. So now, Congress and this agency have the unenviable task of trying to figure out what types of regulation can bring competition, efficiency, integrity, and fairness to the digital asset markets.

Quite frankly, the digital asset markets have generally lacked all of those characteristics to date.

The people at this roundtable today, as well as many in the industry, are seasoned experts in US securities market trading. They know that leverage restrictions can limit profits. They know that merging brokers with trading venues and a lack of a public tape and best execution obligations leads to massive trading profits for brokers and market makers. They know that strict advertising rules can crimp sales. They know that a lack of transparency in orders and trades means bigger margins for insiders. They know that customer due diligence and systems testing can take time and cost money.

But we need to do those things anyway. Because that's what we've learned over centuries of trading any manner of financial assets.

Without material, regulator-imposed, standardized market competition, efficiency, integrity, and fairness rules akin to those in the equities markets, the digital asset markets are going to remain

[30] We would further support the broader revisitation of Section 31 fees to include private fund and other securities transactions, as well, so as to broaden the base of the tax to apply to all of the markets the agency oversees.

overly profitable to insiders and anti-competitive. They're going to remain rife with manipulation and frauds, and they're going to remain rife with massive hacks, valuation swings, and customer losses. And yes, they will also remain extremely profitable to digital asset market intermediaries.

Without reforms, traditional investment fiduciaries – including pension executives who may believe in the promise of some digital assets – will likely remain forced to largely sit on the sidelines, or only engage through more regulated, traditional securities market participants and mechanisms.

If the trading of digital assets wants to be a healthier market, it's going to need rules for that. Luckily, after a few centuries of trading financial assets, and a couple decades of hyper-fast, computerized trading, we know what most of those rules should be.

If you have any questions or would like to follow up, please feel free to reach out to me at ty@healthymarkets.org or (202) 909-6138.

Thank you for your consideration.

Sincerely,

Tyler Gellasch
President and CEO