HMA | HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

May 9, 2025

Via Electronic Mail

Hon. Paul Atkins, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Commission's Response to Executive Order on Reducing Anti-Competitive Regulatory Barriers and Federal Trade Commission Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers

Dear Chairman Atkins:

The Healthy Markets Association welcomes you back to the Securities and Exchange Commission, and we look forward to working with you on a wide swath of capital markets issues in the years ahead.

HMA is a not-for-profit member organization focused on improving the transparency, efficiency, and fairness of the capital markets. We promote these goals through education and advocacy to reduce conflicts of interest, improve timely access to market information, modernize the regulation of trading venues and funding markets, and seek to promote robust public markets. Our members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms.[1]

Today, we write to focus your attention on a potential impact of President Trump's Executive Order on *Reducing Anti-Competitive Regulatory Barriers* on the Commission's work.[2] Our members are active market participants in nearly every aspect of the securities markets, and are uniquely positioned to see where regulations have created specific chokepoints for market participants to impede competition, efficiency, and fairness. For example, we read and summarize every single one of the more than one thousand filings by the securities markets self-regulatory organizations each year.

From this vantage, we wish to draw your attention to several rules related to the plumbing of securities markets trading and reporting that inhibit competition or – in some cases – expressly authorize monopolistic practices, leading to significant market distortions and the capture of economic rents at the expense of more competitive, efficient, fair, and orderly markets. While there are many such examples within the purview of the Commission, we wish to highlight two for special consideration: (1) the

[1] To learn about HMA or our members, please see our website at http://healthymarkets.org.
[2] *Reducing Anti-Competitive Regulatory Barriers*, Presidential Executive Order 14267, 90 Fed. Reg. 15629, (Apr. 15, 2025), *available at* https://www.govinfo.gov/content/pkg/FR-2025-04-15/pdf/2025-06463.pdf ("Executive Order").

Commission's regulatory mandates related to the use of proprietary security and entity identifiers, (2) the Commission's lack of effective oversight of self-regulatory organizations' fee filings.

The Commission and staff are already well aware of the competitive burdens created by Commission rules and inaction in both areas, and we urge you to use this opportunity to finally restore competitive balance in both.

Executive Order on Reducing Anti-Competitive Regulatory Barriers

The Executive Order directs agencies to:

> review all regulations subject to their rulemaking authority and identify those that:
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> i. create, or facilitate the creation of, de facto or de jure monopolies;
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> ii. create unnecessary barriers to entry for new market participants;
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> iii. limit competition between competing entities or have the effect of limiting competition between competing entities;
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> iv. create or facilitate licensure or accreditation requirements that unduly limit competition;
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> v. unnecessarily burden the agency's procurement processes, thereby limiting companies' ability to compete for procurements; or
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> vi. otherwise impose anti-competitive restraints or distortions on the operation of the free market.[3]

Pursuant to that Executive Order, agencies have 70 days to provide a list of such rules to the Chairman of the Federal Trade Commission and the Attorney General, along with a recommendation on whether the rules should be rescinded or modified (and if so, how). For rules that are flagged but not recommended for rescission or modification, the agency is expected to justify why not.

On April 14, 2025, the Federal Trade Commission released a Request for Information, seeking public comment on anti-competitive rules and regulations, and comments are due by May 27, 2025.[4]

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[3] Executive Order.

[4] Press Release, *FTC Launches Public Inquiry into Anti-Competitive Regulations*, Federal Trade Comm'n, Apr. 14, 2025, *available at* https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-launches-public-inquiry-anti-competitive-regulations.

Mandates for the Use of Proprietary Security and Entity Identifiers

Numerous rules specifically require registered entities to submit reports identifying securities and legal entities. Unfortunately, several of these mandates direct the use of proprietary products that are under the control of for-profit entities – thus establishing effective monopolies over permissible regulatory reporting.

Congress has already identified regulatory pointers to proprietary product and entity identifiers as a significant burden on competition, and addressed it. In 2002, Congress directed the federal financial regulators to move towards standardized product and entity identifiers, and a product identifier currently expressly mandated by Commission rules – the CUSIP – fails to meet the minimum requirements established by Congress.

In particular, the *Financial Data Transparency Act of 2022*, which was enacted as a non-controversial title of the *James M. Inhofe National Defense Authorization Act for Fiscal Year 2023*, directed federal financial regulators to jointly issue regulations "establishing data standards for (1) certain collections of information reported to each Agency by financial entities under the jurisdiction of the Agency, and (2) the data collected from the Agencies on behalf of the Financial Stability Oversight Council (FSOC)."[5]

The FDTA demands that financial regulators' data standards include the use of common, non-proprietary legal identifiers for financial products, instruments, and transactions. Further, identifiers must be available under an open license, at no cost to the public.

In August 2024, the federal financial regulators tasked with implementing the FDTA, including the Commission, released a Notice of Proposed Rulemaking for the Financial Data Transparency Act Joint Data Standards.[6]

The Data Standards Proposal expressly considered CUSIP and the ISIN (which includes the CUSIP), but found that "they are proprietary and not available under an open license in the United States."[7]

Accordingly, their use is expressly prohibited by the plain statutory language and clear Congressional intent. Instead, the Data Standards Proposal would use the Financial Instrument Global Identifier (FIGI) established by the Object Management Group as the primary identifier for financial instruments, including securities.

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[5] Public Law 117–263, 136 Stat. 2395, 3421 (2022) ("FDTA").

[6] *Financial Data Transparency Act Joint Data Standards*, SEC, 89 Fed. Reg. 67890 (Aug. 22, 2024), *available at* https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18415.pdf ("Data Standards Proposal").

[7] *Financial Data Transparency Act Joint Data Standards*, at 67897.

Similarly, the Data Standards Proposal recommends the use of the Legal Entity Identifier (LEI) as the legal entity identifier standard.

As we shared with the Commission in August,

> In the aftermath of the Global Financial Crisis, regulators around the world began work on what would ultimately become the Global Legal Entity Identifier Foundation and the LEI framework. For over a decade, market participants have been working with regulators to develop and implement LEI, which is a "20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO)."

Similar to its determination with respect to FIGI, the Data Standards Proposal explicitly recognized that the LEI is nonproprietary and made publicly available under an open license, free of charge to any interested user.

Notably, LEI is already used in private and public sectors around the world, including in the United States.[8]

Pursuant to the FDTA, the Commission is already reviewing and in the process of remedying its decades-long error of empowering a private monopoly over reporting using a proprietary financial product identifier. We urge you to flag agency rules directing the use of CUSIP or other proprietary product or entity identifiers to the Federal Trade Commission, and move with all deliberate speed to adopt rules to implement the Financial Data Transparency Act, as proposed by the Data Standards Proposal.

Exchanges' Fee Filings

Rules for national securities exchanges must all be consistent with the principles laid out in the Exchange Act, including that they:

- "provide for the equitable allocation of reasonable dues, fees, and other charges;"[9]
- not be "designed to permit unfair discrimination";[10]
- "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Act;[11] and

[8] Data Standards Proposal, at 67896.
[9] 15 U.S.C.§ 78f(b)(4).
[10] 15 U.S.C.§ 78f(b)(5).
[11] 15 U.S.C.§ 78f(b)(8).

- be designed "to protect investors and the public interest.[12]

Those principles are essential to promote competition, efficiency, integrity, and fairness.

However, over time, the Commission's process for reviewing these filings (including its generally "hands-off" approach to most filings) has led to extortionate pricing by exchanges for essential market data and access, as well as distortive, anti-competitive trading fee schedules.

Under then-Chairman Jay Clayton, the Commission hosted a two-day industry Roundtable on Market Data and Market Access that explored how exchanges exploited their natural monopoly positions over their customers' order information on their venues to extract economic rents and separately distort competition between brokers, market makers, data providers, and other market participants.[13]

Specifically, because registered national securities exchanges may provide the best prices for executions of securities trades, brokers, data providers, and even other exchanges are effectively compelled to connect – either directly or through intermediaries – to them.[14] A brokers' duty of best execution *should* involve brokers surveying all reasonable options for executions, and routing their customers' orders based on which venues are likely to lead to the best execution. And the Commission should not weaken that obligation, but rather improve it.

At the same time, empowered by their monopolistic control over access to their own exchange, exchanges have dramatically increased those costs from essentially free to often ten or fifteen thousand dollars per month, or more, over the past several years. For example, between 2010 and 2018, the cost of a 10Gb connectivity product from one family of exchanges skyrocketed more than seven-fold, even though standard data transmission costs had fallen sharply over the same period.[15] Most of the time, the exchanges offer no credible evidence tying many of these costs to the costs of

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[12] 15 U.S.C.§ 78f(b)(5).

[13] *Agenda: Roundtable on Market Data and Market Access*, SEC, *available at* https://www.sec.gov/tm/agenda-roundtable-market-data-and-market-access (last viewed Apr. 24, 2025); see, also, *Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, SEC, Oct. 25, 2018, *transcript available at* https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf and *Roundtable on Market Data Products, Market Access Services, and Their Associated Fees*, SEC, Oct. 26, 2018, *transcript available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf*.

[14] See, e.g., 17 CFR § 242.611.

[15] See, *Unfair Exchange: The State of America's Stock Markets*, Remarks of Hon. Robert J. Jackson, Jr., SEC, n32, Sept. 19, 2018, *available at* https://www.sec.gov/newsroom/speeches-statements/jackson-unfair-exchange-state-americas-stock-markets (noting that EDGX raised the price on its standard 10GB connection five times between 2010 and 2018 "leaving the price of the connection seven times higher than it was in that year").

producing these data products – despite Commission staff guidance attempting to reign in those fees.[16]

The Commission's Market Data Infrastructure Rule,[17] revision to its procedures for approving NMS Plan rules,[18] Governance Orders related to the consolidated tapes, Staff Guidance on SRO Filings Related to Fee Fees,[19] and other efforts have all expressly sought to promote competition and reduce exchanges' abuses of their monopolistic control over market data. However, these efforts have thus far proven ineffective in constraining market data costs.

At the same time, many exchanges have adopted rules for trading fees that also create significant burdens on competition. Specifically, the Commission has allowed exchanges to adopt transaction pricing that explicitly benefits the exchanges' largest volume traders. Again, the Commission has sought to address these concerns with its reforms to Regulation NMS and proposal related to volume-weighted pricing tiers.

Thus, both with respect to market data and access, as well as with respect to transaction costs, exchanges have adopted rules that act as material burdens on competition, discriminate against smaller market participants, and increase market inefficiencies and unfairness.

The Commission has the express statutory authority to suspend, disapprove, or vacate abusive, anti-competitive exchange rules, but has very rarely chosen to exercise that power.

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[16] We note that certain of the newer and smaller exchange families, including MIAX and IEX, have attempted to provide detailed cost justifications for their fees. At the same time, exchanges in the NYSE, Nasdaq, and Cboe families of exchanges, have generally not. As a result, the larger exchange families have enjoyed materially higher margins on their data-related products, in particular. The SEC should, in the spirit of the Executive Order, consider ways to level the playing field, and compel the larger families to provide cost-based justifications for existing fees and for all future fee changes. Put simply, the Commission should hold all exchanges to the same standards – including the justifications of their current fees and future fee changes. Effectively requiring cost-based justifications from smaller exchanges or for just newer fee filings, without reviewing the enormous fees charged by the largest exchange families, which were first implemented without any cost-based justifications, essentially cements an unlevel, anti-competitive playing field for smaller exchanges. The Commission should review existing fees and changes for compliance with the law, and not simply continue to effectively margin manage only the smaller exchanges. .

[17] *Market Data Infrastructure*, SEC, 86 Fed. Reg. 18596 (Apr. 9, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2020-28370.pdf.

[18] *Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments and Modified Procedures for Proposed NMS Plans and Plan Amendments*, SEC, 85 Fed. Reg. 65470 (Oct. 15, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-10-15/pdf/2020-18572.pdf.

[19] *Staff Guidance on SRO Rule Filings Related to Fees*, SEC, May 21, 2019, *available at* https://www.sec.gov/about/staff-guidance-sro-rule-filings-fees.

In October 2021, HMA petitioned the Commission to revise its process for reviewing self-regulatory organizations' rule filings.[20] At the time, we wrote:

> The Commission's process for reviewing and approving many SRO filings, and fee filings in particular, is fundamentally flawed.
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> While Congress created a "streamlined" process for review and consideration of SRO fee filings as part of the Dodd-Frank Act, it did not relieve the Commission of its obligation to review and ensure that SRO fee filings meet the requirements of the Exchange Act and Commission Rules. The Commission is still obligated to review SRO filings and determine that those filings are consistent with the Exchange Act.[21]

Specifically, the Commission's failure to modify its own Commission Rules for the review of exchange fees "create[s], or facilitate[s] the creation of, de facto or de jure monopolies; (ii) create[s] unnecessary barriers to entry for new market participants; [and] (iii) limit[s] competition between competing entities or have the effect of limiting competition between competing entities."[22]

Conclusion

As part of its effort to comply with the Executive Order, we urge the Commission to identify and recommend modifications to (1) its rules that rely upon proprietary product and entity identifiers, and (2) its internal Commission rules for the review of self-regulatory organization fee filings.

If you have any questions, please contact me at (202) 909-6138 or ty@healthymarkets.org.

Thank you for your consideration.

Sincerely,

President and CEO

cc: Andrew N. Ferguson, Acting Chair
Federal Trade Commission

[20] 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 ("HMA SRO Filing Process Petition").
[21] HMA SRO Filing Process Petition, at 2 (internal citations omitted).
[22] See, Executive Order.