

WILLIAMS & JENSEN, PLLC

DATE: April 10, 2018

SUBJECT: Equity Market Structure Symposium Sponsored by the STA Foundation and the University of Chicago

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On April 10, SEC Chairman Jay Clayton gave a [speech](#) focused on his equity market structure priorities at an event sponsored by the University of Chicago and the Security Traders Association (STA) Foundation. SEC Trading and Markets Division Director Brett Redfearn also gave [remarks](#) at the event.

Chairman Jay Clayton outlined five principles relevant for equity market structure: 1) fidelity to the SEC's three part mission: to protect investors, to maintain fair, orderly and efficient markets, and to facilitate capital formation; 2) focusing on long term interests of Main Street investors; 3) facilitating transparency; 4) retrospective review centered on listening to investors and market participants about where SEC rules are, and are not, functioning as intended; and 5) meaningfully assessing regulator initiatives in coordination with other regulators and open communication with stakeholders in SEC markets.

Clayton noted that in addition to the transaction fee pilot program proposed last month, the SEC intends to vote on final rules “in the coming months” on the 2015 proposal to enhance alternative trading system (ATS) disclosures and on the 2016 proposal on broker order routing disclosures. Clayton also noted that the SEC's Division of Trading and Markets plans to hold several staff roundtables on specific equity market structure topics. He explained that the roundtables will be: (1) market structure for thinly-traded securities, to be held on April 23; (2) access to markets and market data; and (3) regulatory approaches to addressing retail fraud.

Division of Trading and Markets Director Brett Redfearn stated there are currently 17 SEC pilot projects, and he stated they must be structured efficiently to limit costs and prevent altering the behavior of market participant. He noted that pilot programs should focus on examining issues without locking into policy solution. He noted the Tick Size pilot as a case study to determine if a wide tick increment would increase liquidity. He stated that a year and a half into project, the Division of Trading and Markets provided a timeline for Self-Regulating Organizations (SROs) to provide information. He said a joint assessment on the project is now due on July 3, 2018. He expressed support for ending the pilot because the data will not result in a policy solution.

Redfearn noted that market participants support an examination of access fees, even though there may not be consensus about some of the elements of such a pilot. He stated the transaction fee pilot will test the effect of lower exchange access fee caps and prohibiting rebates. He stressed that a bucket that prohibits rebates is important for collecting data on how rebates function at different levels. He mentioned that for those who believe the best policy result is for a tiered access fee cap structure based on the specific liquidity characteristics of different securities, there could be a potential outcome whereby the SEC could be setting fee caps at multiple levels, which would require a “hard look at the appropriate role of regulation in transaction fee pricing.”

Regarding the transparency initiatives for ATSS and broker order routing disclosures, **Redfearn** noted that the SEC has given significant consideration to the comments on the proposed rules. He added that transparency is generally highly beneficial, but there may be times when too much information about systems design can result in giving away intellectual property or may not provide “apples-to-apples” comparisons of order routing behavior.

Redfearn noted that the first staff roundtable on April 23 will address the market for thinly-traded securities (both equities and ETPs). He stated that a single market structure for all NMS securities may not be appropriate. He pointed to the Treasury Department’s Capital Markets Report recommendation of suspending unlisted trading privileges (UTP) for certain less liquid securities, but allowing broker internalization to remain as a trading option. He explained that this recommendation, as well as other ideas, will be examined at the roundtable.

Redfearn stated the second roundtable will focus on access to markets and to market data, noting the differential in access to such products and services. He noted that the roundtable will explore a number of topics, including whether greater transparency into the economics of market data distribution by exchanges and the Securities Information Processors (SIPs), the pros and cons of the single consolidator model for SIP data versus a competing consolidator model, and the SIP governance model.

Redfearn noted the third roundtable will address regulatory approaches to combat retail fraud. He expects the roundtable to address, among other things, fair and efficient market structure objectives in the contexts of digital assets and penny stocks.

Question and Answer

CAT Completion

An audience member asked about concerns around the completion of the CAT, SRO rulemaking, and the October deadline. **Clayton** responded that his interpretation of the question is how investors should report if the CAT is not complete. He said it is important to solve this problem and he emphasized that in a data driven market there needs to be a way to aggregate data.

Fiduciary Rule

An audience member asked for a timeline on SEC updates on the fiduciary rule. **Clayton** replied “the sooner the better.” He said he would like to see it “very soon.” He stated the holdup is related to getting a proposal they are happy with out the door.

Pilot Programs

An audience member asked if the access fee pilot could show different rates for different securities as a solution. **Redfearn** replied the SEC did not want to go too far in assuming results in the pilot projects. He stated the liquidity characteristics of different stocks makes it “conceivable” there is a “sweet spot” for different securities at different levels. He said this could create a situation where the SEC is putting in access fee caps at multiple levels. He asserted that, in the case of the zero-rebate bucket, the market could set the access fee cap without SEC involvement.

An audience member noted the Tick Size pilot program data has shown little improvement in the three market pockets tested, and asked if these results demonstrated a failure in the pilot's design. **Redfearn** replied this was not a design flaw, and the Division of Economic and Risk Analysis (DERA) is performing research that will contain meaningful findings. He said when the SROs produce a report in July there will be meaningful findings. He asserted there is likely "ample evidence" from the data to prove the Tick Size pilot is not a good basis for action. **Clayton** added there is value in finding that no action is necessary.

An audience member asked about the pilot project on options market structure. **Redfearn** replied the SEC would continue to evaluate the options market and they are currently looking at the options pilot. **Clayton** said the SEC is serious about looking retrospectively at the intricacies of various markets to more quickly establish standards.

NMS Plans

An audience member asked if concentration of medallions with a few exchanges made the SEC willing to consider changes to NMS plan guidance. **Redfearn** said he did not want to presume all issues which would be examined. He expressed support for EMSAC's work on governance questions. He reiterated concerns about CAT for NMS plan governance.

MiFID

An audience member asked about the SEC's response to the research provision in the European Union's (EU) Markets in Financial Instruments Directive (MiFID). **Clayton** responded the SEC is monitoring European securities regulation. He noted regulatory events are relatively blunt. He said accommodating, without importing, European change in regulation has been good practice. He stressed the need to continue this practice in data security. **Redfearn** said the fiduciary rule and the MiFID issue for Share Trading Obligation regarding equivalence determination have been the biggest challenges during his time at the SEC. **Clayton** asserted that the most effective arguments to European counterparts are those centered on issues shared by European investors.

Shareholder Voting

An audience member asked about different shareholder voting structures. **Clayton** replied he did not believe any voting structure is a one-size-fits all model for governance. He stated he is open to alternative voting structures.

Government Collaboration

An audience member asked about the Department of the Treasury's influence and the quality of the Capital Markets report. **Clayton** said coordination between different regulatory and executive agencies is essential and reiterated support for the Capital Markets report and how it framed issues and recommendations. He argued the report was a good model for government across multiple agencies. An audience member asked about the SEC's work with Commodity Futures Trading Commission (CFTC) Chairman Christopher Giancarlo on virtual currencies and ICOs. **Clayton** responded the SEC coordinates with CFTC to bring consistency on Title VII of the Dodd-Frank Act. He stated they share the goal of achieving substantive regulation in cheaper way. He said they are developing the regulatory framework for ICOs in the security space under SEC and cryptocurrencies in CFTC's jurisdiction. **Redfearn** reiterated that coordination with CFTC had been good for harmonizing standards.