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Chairman Shapiro, Commissioners, and SEC staff. Thank you for the opportunity to appear today. We applaud the Commission for its recent actions to help enhance investor and issuer confidence, including the announcement of a market wide audit trail and single stock circuit breakers, and welcome this timely review of market structure.

Our markets have changed markedly over the past 10 years, moving from a tightly controlled duopoly to one of intense competition and innovation, but are also challenged by increased fragmentation, lack of obligated liquidity provision, and a decrease in displayed liquidity, particularly in less liquid stocks. While by and large these changes have been beneficial as May 6 showed, there is clearly a need to take a more detailed look at how we have evolved.

It is tempting to use the word innovation as a magical justification for almost anything designed to give a competitive advantage, including practices that do not appear to be in the best interests of fair and orderly markets. Indeed there are many innovations which have arisen over the past 10 years in the financial markets that regulators would undoubtedly like to have taken back or at least overseen differently. There is often a natural tension between innovations which impact a subset of the market or market participants, and the goal of having a market which gives investors confidence and protects the concerns of issuers.

Nowhere are some of these tensions clearer than on the topic of dark liquidity.

undisplayed liquidity has been a valuable and evolving tool for market participants for decades, whether taking the form of:

- a broker keeping part of an order hidden from the marketplace, on a block desk or an exchange floor;
- a hidden-order type on an exchange;
- executing in the dark through an ats; or
- through a purely internalized execution.

and while each of these structures provides benefits to the direct parties to the transaction, each allows different types of investor access and has different side-effects. The Commission should also consider the aggregate effect of dark activity on the overall marketplace, and determine how best to foster interaction among these in a way that creates a healthy environment for traders, investors, and issuers.

Indeed, recent academic studies have highlighted the negative impact on spreads and volatility as a result of increasing off-exchange levels. Given the 600 bps increase in off-exchange activity in the past year, excluding Direct Edge, there is cause for concern. additionally we must consider the “toxicity” levels on exchanges as we continue to filter increasing levels of order flow before accessing public markets, disadvantaging displayed limit orders, the very orders we claim to want to encourage.

there are no easy answers to these questions. turning back the clock and stifling a competitive and innovative marketplace is not the solution. however there are some moderate steps that should be looked at:

- first is more consistent rulemaking and oversight for similar functions. we should make sure that volume isn't migrating to the dark for unfair structural reasons or regulatory arbitrage. Existing practices, such as subpenny price improvement should be examined to see whether they violate the spirit if not the specifics of existing regulation.
- second is obligations to the market by liquidity providers, and incenting of displayed liquidity.
- finally there should be additional disclosure and scrutiny of order handling practices, both for institutional and retail orders. clearly existing practices were a contributing factor to the may 6th crash.

we must also not forget that the equity markets primarily exist to facilitate capital raising activity – yet we frequently neglect the issuer in our market structure debates. the issuer community generally views our recent market structure evolution negatively, and may 6th reinforces this view. we need to refocus our markets on what is best for issuers and investors rather than solely emphasizing speed and advantages aimed at selective participants

Thank You.