Sen. Mark R. Warner

Proposed Opening Statement

Hearing on “Regulatory Reforms to Improve Equity Market Structure”

March 2, 2016

566 words

I want to thank Sen. Crapo for holding a hearing on this important topic.

Over the past few decades, we have seen remarkable technological progress and innovation in our securities markets, coupled with substantial regulatory reform. Some of these advances and reforms, including decimalization, have brought considerable rewards for individual investors by narrowing spreads and increasing liquidity.

Most trades today can happen within fractions of a second, providing good prices and counterparties for those seeking to buy equities around the world.

But at the same time, we have seen increased volatility and periodic dislocations.

In recent years, we have seen:

* a market-wide Flash Crash;
* a series of “mini-Flash Crashes” in individual equities of Blue Chip stocks, including Lorillard and Xerox;
* a “Flash Freeze” at NASDAQ in 2013;
* problems with high-profile IPOs, like Facebook and BATS;
* a glitch at the New York Stock Exchange in July 2015 that halted trading for hours;
* an ETF meltdown in August 2015;
* and numerous allegations of, and settlements for, misbehavior by dark pool operators.

It is clear much work around market structure remains. So where do policymakers go from here?

**First**, in era of microsecond trading, we need to reevaluate the way our stock markets function. Chair White has made the right call by asking Commission staff to conduct a holistic market structure review.

We need data to be able to rationally analyze the market so appropriate investor protections can ultimately be implemented.

**Second**, we should explore additional pilots. It has been nearly two years since Chair White announced her holistic review. Some have argued against conducting pilots in the interim as inconsistent with this review, but I don’t think this is necessarily the case.

As long as pilots are carefully crafted and done in a timely fashion, they can produce valuable data.

Last week, I saw a stunning graphic from RBC Capital Markets that charted 839 different fee schedules that are composed of 3,729 separate fee variables. When one examines these variables in detail, it appears that exchanges are using their “fee engineers” to put together “bespoke” pricing terms for one or a small handful of customers in order to attract and retain order flow.  Given this incredible complexity, it likely very difficult for market participants to know whether they are getting best execution and the benefit of a “fair and orderly” market.

To address this, there is a proposal pending before the SEC that would, for a six-month period, eliminate rebates (or comparable inducements) for a random sample of 50 of the 100 most actively traded stocks.

I strongly endorse this maker-taker pilot to help detect conflicts of interest, promote price transparency, and reduce inefficiencies.

**Third**, we should reexamine the role dark pools play in market structure, particularly in light of recent settlements with the SEC and New York Attorney General. The original rationale for alternative trading venues – executing block sales – appears to have diminished, with only an average trade size of 187 shares at the 5 largest dark pools, according to a FINRA study in 2014. The SEC has made recent strides in both enforcement and regulation of this space, and I hope it continues.

**Fourth**, we must have the regulatory tools necessary to conduct adequate market oversight. This means establishing the Consolidated Audit Trail so the SEC can have near real-time insight into the mechanics of the stock market.

It is beyond frustrating that, nearly 6 years after the Flash Crash, we still haven’t built the CAT. Both of our witnesses today have a critical role in its approval, so I look forward to hearing their explanations on its timely completion.

Thank you, I look forward to the testimony.