Congress of the United States
Washington, DC 20515

November 15, 2016

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Exchange Act Release No. 34-74851; File No. S7-05-15 – Exemption for Certain Exchange Members

On March 25, 2015, the Securities and Exchange Commission ("SEC" or "Commission") proposed amendments to Rule 15b9-1 ("the Amendments" or "the Proposal") that would require additional firms to register with the Financial Industry Regulatory Authority ("FINRA"). During a speech on September 14, 2016, you stated that the rulemaking would be finalized "in the near future."[1] While we share the Commission's goal for proper oversight of the securities markets, we have concerns that the rulemaking does not adequately contemplate the impact on the options market and its existing regulatory structure, and may have serious and unnecessary adverse effects on equity options market makers.

The Amendments appear to be broader than their stated intention in proposing options market-makers become members of FINRA. The SEC explains that the Amendments would "enhance regulatory oversight of active proprietary trading firms, such as high frequency traders," and states the purpose of the Amendments to be the extension of FINRA registration to an additional 14 broker-dealers. The Proposal states that the basis for the rulemaking is an SEC Concept Release from 2010 that is specific to the equities markets and does not provide data or analysis with regard to the options markets to support the requirement of FINRA membership for options brokers and dealers.[2]

Supervision by FINRA could immediately increase market oversight, but it would also impose regulatory costs that should not be ignored by the Commission. Of serious concern, smaller options market makers may not have the economies of scale to absorb these costs, which could lead to consolidation and decreased competition and thus impair liquidity, especially during times of market stress. In your recent speech, you acknowledged the Commission's need to "avoid undue interference with practices that benefit investors and market efficiency."[3] We ask that additional research and data be obtained and analyzed before a final rule requiring additional firms to register with FINRA is applied to the options markets.

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[1] https://www.sec.gov/news/speech/white-equity-market-structure-2016-09-14.html
[2] Securities and Exchange Commission Concept Release on Equity Market Structure; Proposed Rule. January 21, 2010. https://www.sec.gov/rules/concept/2010/34-61358fr.pdf
[3] https://www.sec.gov/news/speech/white-equity-market-structure-2016-09-14.html

In order to avoid unintended consequences of the proposed rule, we ask that you consider whether the Commission intended to require options market makers whose trading in the cash equities markets is related to legitimate hedging to register with FINRA in your rulemaking. We are concerned about the potential impact of these costs, such as decreased competition and thus decreased options market liquidity, and the impact that would have on investors, particularly during times of market stress. Finally, we urge you to consider whether requiring options market makers to register with FINRA provides meaningful cross-market surveillance capabilities for options market makers who trade through a broker-dealer in the equities markets only to hedge.

Thank you for your attention to this matter.

Respectfully,

Bill Foster
Member of Congress

Randy Hultgren
Member of Congress