January 23, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Commission Statement on Market Structure Innovation for Thinly Traded Securities (File No. S7-18-19)

Dear Ms. Countryman:

The American Securities Association (ASA)[1] is pleased to provide comments on the Securities and Exchange Commission's October 17th, 2019 Statement on Market Structure Innovation for Thinly Traded Securities ("Statement"). The Statement raises critical issues for our capital markets and the investors that rely on robust public markets for their retirement, college savings, or other financial needs.

The ASA has expressed concerns about the decline in U.S. public companies over the last two decades. There are roughly half the number of public companies today than existed in the mid-1990s, while the average annual number of IPOs today remains well below its historical average. There are several causes of this decline, but outdated SEC rules and a desire by some to protect the status quo also play a role.

The annual and quarterly reporting burden of public companies has grown exponentially over the last quarter century. The trading rules adopted by the SEC –Regulation National Market System (Reg NMS) – have created an unequal equity market structure that favors speed and algorithmic trading in large cap securities over trading in small and mid-cap securities (SMEs), which has hurt secondary market liquidity in SMEs. Additionally, a growing cabal of activist investors seek to impose their personal and political agendas on businesses by imposing costs on companies through the shareholder proposal process. Each of these factors undermine the public company model that has created wealth and prosperity for generations of Americans.

<u>The Need to Improve the Environment for Thinly Traded Securities</u>.

While the Commission has made great strides over the last three years to reduce the reporting burden for small issuers and mitigate the harmful practices of special interest activists, comparatively little has been done to improve the secondary market trading environment for

[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

SMEs. The SEC has missed several opportunities to implement reforms that have the longstanding support of a broad spectrum of market participants. This failure to act has effectively kicked the can down the road on the market structure debate for SMEs, preserved the status quo for those who benefit from the current trading regime, and continues to be a disincentive for growing small American businesses to complete an IPO. The Commission should take this as an opportunity to reset the market structure debate and prioritize reforms that support small business capital formation and market stability.

The Statement, which was released outside of the Administrative Procedure Act (APA) process, specifically asks for proposals related to the suspension or revocation of unlisted trading privileges (UTP) for certain stocks. UTP enables securities listed on an exchange to be traded on other national securities exchanges and, as the Statement notes, is automatically extended to securities prior to their listing on an exchange. While UTP makes sense for larger companies with adequate liquidity and significant trading volume, it simultaneously fragments liquidity and increases trading costs for thinly traded stocks, which tend to be SMEs.

An October 2017 U.S. Treasury report on the capital markets[2] ("Treasury Report") rightfully stated that "one size may not fit all when it comes to trading venue regulation." Accordingly, the Treasury Report recommended that less-liquid stocks be allowed to partially or fully suspend their UTP and select a sole exchange which they wish to trade upon. Treasury suggested that such a suspension could remain in place until a stock's liquidity reached a certain threshold, at which point UTP could be reinstated. We agree.

Furthermore, in April 2018 a group of organizations representing every size and sector of our economy produced a report that included recommendations for how to reverse the decline in public companies, including recommendations related to equity market structure.[3] ("Coalition Report") This joint coalition – whose membership includes issuers, broker-dealers, asset managers, exchanges, and venture capital firms – all agreed strongly regarding the ability of issuers to have their UTP suspended. As the Coalition Report noted: "We believe that emerging growth companies (EGCs) and small or microcap issuers with distressed liquidity should be able to suspend their [UTP]…such a program should apply only to a limited universe of smaller public companies where distressed liquidity is an acute problem…"

Congress has also recently weighed in on this issue. In July 2018, the U.S. House of Representatives passed H.R. 5877, the "Main Street Growth Act" which would create the legal framework for venture exchanges in the United States. Included in that legislation (which had earlier passed the House Financial Services Committee by a vote of 56-0) was an important provision that would prohibit venture exchanges from extending UTP to issuers that chose to list on a venture exchange.

Given the wide and bipartisan support behind allowing SME issuers to trade on a single exchange, we are baffled as to why the SEC chose to address this issue through an informal

[2] U.S. Department of the Treasury: A Financial System that Creates Economic Opportunities (Capital Markets) October 2017.
[3] Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public (Issued by U.S. Chamber of Commerce, American Securities Association, Equity Dealers of America, Securities Industry and Financial Markets Association, National Venture Capital Association, Nasdaq, Biotechnology Innovation Organization, TechNet.)

statement rather than through the legal options provided to it under the APA. We fear this inaction could further delay the Commission from taking real action that's needed to address the issue. The Commission should stop this procrastination and vote on a transparent proposal under the APA that will allow the public to comment on the utility of suspending UTP for EGCs, SMEs, and other thinly traded stocks.

Intelligent Tick-Sizes.

Both the Coalition Report and the Treasury Report also recommended that issuers become eligible to determine their own "tick-size" to improve the liquidity of thinly traded or lower priced stocks. The SEC's 2000 decimalization order transitioned the trading of stocks – regardless of stock price or market capitalization – to penny increments. While decimalization may make sense for large capitalization, highly traded stocks, narrow can serve as a disincentive for market makers to trade the shares of EGCs or other small issuers.

A recent report from Nasdaq, done in collaboration with a diverse group of market participants and academics, proposes a set of six different tick increments. Stocks would be categorized based upon their duration-weighted average quoted spread over a certain period of time. Importantly, a tick increment for a company would not be static as it could transition to a different increment after a data-driven review of how the security trades. In other words, objectivity, not subjectivity will drive the outcome. ASA supports the concepts included in the Nasdaq proposal and we believe it is time for the SEC to act upon such initiatives.

Conclusion.

The Commission has had ample opportunity to address some of the longstanding concerns regarding the structure of our nation's equity markets. Now, is the time for action. We recommend that it begin by proposing changes related to UTP and tick size for SMEs, EGCs, and thinly traded stocks. This action would have the support of a broad cross-section of industry participants and would make it more attractive for businesses to enter our public markets and create greater opportunity for America's retail investors to share in their success.

Protecting the business models of dark pools is not serving America's businesses or promoting capital formation. The SEC would do well to remember that market structure was created for and is intended to support and promote capital formation, not the other way around. The ASA looks forward to working with the Commission on these critical matters.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association