

David Weild IV, Capital Markets Advisor at Grant Thornton, Founder & Chairman of Capital Markets Advisory Partners, former Vice Chairman of NASDAQ

Statement to the Joint-CFTC-SEC Advisory Committee on Emerging Regulatory Issues

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Thank you Chairman Schapiro, Chairman Gensler and members of the Committee for the opportunity to participate.

There has been a computer arms race unleashed on Wall Street by changes in regulation and technology and we all need to catch up. This computer arms race is displacing fundamental investing with computer-trading based strategies and has created new forms of systemic risk, a loss of investor confidence, and a disastrous decline in primary (IPO) capital formation and the number of publicly listed companies in the United States.

From 1997 to Year End 2009 there has been a 40% decline in the number of publicly listed (i.e., NYSE, AMEX and NASDAQ) companies in the United States. On a GDP weighted basis, we have seen a more than 55% decline in the number of publicly listed companies. Today's market structure has lost the ability to support small capitalization companies and initial public offerings (IPOs) on the scale necessary to help drive the US economy. The U.S. now annually delists twice as many companies as it lists and this trend has been going on since the advent of electronic trading. For this reason, we have called for an alternative market system to reinvigorate primary capital formation and the fundamentally-oriented ecosystem of research, sales and liquidity provision that is essential to support companies that need capital to build plants, buy equipment and put people to work.

In our way of thinking, the unemployment crisis in the United States has been partly caused by changes to debt and equity capital market structure and the events of May 6 may give us an opportunity to come to grips with the notion that we have entered into an era where trading interests are eclipsing fundamental investment and economic interests.

Fundamental investing, or so-called "information increasing" activities, are being displaced by trading, or so-called "information mining" activities. The growth in indexing and ETFs may be exacerbating this problem.

In addition, stock market structure today is geared for large-capitalization stocks with typically symmetrical order books but disastrous for the vast majority of small-capitalization stocks with asymmetrical order books (where there is not naturally an offsetting buy order to match against a sell order and vice versa). Who is there to create liquidity for the small capitalization stock? The answer is often "no one."

The "Flash Crash" was an example of where even normally liquid securities went to a state of "asymmetry" and price discovery broke down.

What are single-stock electronic circuit breakers other than an admission that trading interests have overshot notions of fundamental value and that we need to hit the "pause" button to allow the slower fundamental investors to catch up and get price discovery back on track?

We applaud the establishment of this joint CFTC-SEC Committee. We also applaud recent moves to create a Consolidated Audit Trail and a Large Trader Reporting System. However, we believe that until all trades, quotes and other messages in all interrelated markets are tagged and traceable to the trading venue, broker and ultimate investor, and disclosed to the market, markets will not be perceived as fair.

As Justice Brandeis said, “Sunlight is said to be the best of disinfectants.” Sunlight is also the best enabler of investor confidence and effective regulation. With full tagging, tracking and reporting and the application of post-trade analysis and test bed techniques such as Agent-Based Models, regulators and market participants will be once and for all be in a position to judge the impact of other participants and to regulate and plan accordingly.

Finally, we ask that you consider a Concept Release devoted to Primary (IPO) Capital Formation.

It may be time to admit that what works for large, naturally visible companies, is the antithesis of what is needed by small companies and it is these small companies that are essential to grow our markets, reduce unemployment, restore US competitiveness and drive the US economy.

Thank you.