Testimony of Professor Robert J. Jackson, Jr.
New York University School of Law

Before the
Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets
of the
Committee on Financial Services
United States House of Representatives

Hearing on
Oversight of America’s Stock Exchanges: Examining their Role in our Economy

Wednesday, March 30, 2020
Rayburn House Office Building

Thank you, Chairman Sherman, and thank you, Ranking Member Huizenga, for the opportunity to testify before you today about the oversight of the Nation's stock exchanges. For someone like me, our stock exchanges are a symbol of how investing can change the lives of American middle-class families. You see, I was born in the Bronx, New York, to a big Irish Catholic family. My mother is one of nine kids, and my father is one of five. The day I was born, none of them had been to college. So my parents plowed their paychecks into the stock market each week, confident that their savings could give their son the chance to go to school. Forty years later, my parents sat behind me at my Senate confirmation hearing to be a Commissioner of the Securities and Exchange Commission. So to me, our stock exchanges not only encourage investment and entrepreneurship and growth. They make it possible for two middle-class parents to change their son's life. Our stock exchanges are at the core of the American dream. That's why it is crucial that our exchanges give investors a level playing field—and it's why today's hearing is so important.

While I served as a Commissioner, I was fortunate enough to give two speeches—one hosted by George Mason University and the Healthy Markets Association, the other by the Open Markets Institute—on what I think is the uniquely American solution to the problems that plague our exchanges: competition.[1] Those institutions are very different ideologically, but they reflect strong bipartisan support for ensuring that exchanges compete like all American businesses should: by adding value, not leveraging their market power and legal status. During my time on the Commission, my Office led a series of initiatives designed to achieve just that.[2] Unfortunately, exchanges have used litigation and lobbying to stall important progress on these issues. Several of the bills you are considering today would leave no doubt that the SEC has the authority it needs to make our exchanges more than mere symbols of competition—and instead businesses that thrive based on innovation, not litigation. I consider that legislation in further detail below.

[1] SEC Commissioner Robert J. Jackson, Jr., *Unfair Exchange: The State of America's Stock Markets* (remarks at George Mason University, Sept. 19, 2018); SEC Commissioner Robert J. Jackson, Jr., *Competition: The Forgotten Fourth Pillar of the SEC's Mission* (remarks at the Open Market Institute, Oct. 11, 2018).

[2] *Id.* ("[M]y office will work closely with [then-] Director Redfearn [on] market data.").

I. The Lack of Competition at our Stock Exchanges

When I first took office at the SEC, I asked our Staff to explain a puzzling fact: Even though we had 13 public stock exchanges at the time, 12 of them were owned by 3 companies.[3] Because I've worked on mergers and acquisitions as an investment banker and corporate lawyer, I'm familiar with the economies of scale that justify acquisitions. But I have rarely come across an industry where conglomerates buy, and then continue to run, identical businesses. So I asked the Staff: why are our markets structured this way?

The answer lies in who decides what data investors get on stock prices. We have a two-tiered system of stock-price information—a lower-quality public feed and generally higher-quality private ones.[4] We allow the exchanges to run both—while profiting from private feeds. The more exchanges a company owns, the more private data feeds they can charge for—even if doing so conflicts with overall market efficiency.[5] As a result, the public feed is slower and less reliable than the private feeds the exchanges sell. That's because exchanges have understandably underinvested in the public feed—a product they compete with. As I've said before, it's like letting Barnes & Noble run our public libraries: nobody should be surprised to find that our libraries don't have enough books.[6]

---

[3] Since then, new entrants to the market have brought welcome innovation to our market structure. But even those new entrants cannot resist repeating the rent-seeking approach of the incumbent exchanges. The reason, of course, is that our stock-market structure has arisen not from the problematic conduct of a particular exchange but instead the incentives the law gives them. MEMX, *MEMX to Charge for Market Data*, MARKETS MEDIA (Feb. 10, 2022) (announcing that MEMX, an exchange launched in 2020 "by a diverse group of participants to benefit all investors" will now charge for market data after achieving 4% market share).

[4] As I have before, for ease of exposition I generally refer to the CTA/CQ plan and the UTP/OTC NMS plans, which most call the "two centralized Securities Information Processors ("SIPs") to which all exchanges are required to report," as the "public feed" for purposes of this testimony. Robert P. Bartlett, III & Justin McCrary, *How Rigged Are Stock Markets? Evidence from Microsecond Timestamps*, 45 J. FIN. MKTS. 37 (2019); *see also* Shenwei Ding, John Hanna & Terrence Hendershott, *How Slow is the NBBO? A Comparison with Direct Exchange Feeds*, 49 FIN. REV. 313 (2014).

[5] Giovanni Cespa & Thierry Foucalt, *Sale of Price Information by Exchanges: Does it Promote Price Discovery?*, 60 MGMT. SCI. 1 (2014) (pointing out that exchanges jointly price trading and market data fees, creating incentives to charge more at the cost of potential price discovery).

[6] Jackson, *Unfair Exchange: The State of America's Stock Markets*, *supra* note 1.

During my tenure, the SEC took several key steps to address exchanges' power over stock-price data. Today, I'll emphasize two of them. First, the Commission adopted rules requiring exchanges to upgrade the public feed by including additional information that has become essential to trading in modern markets.[7] Second, the SEC adopted rules requiring the exchanges to propose reforms to the governance of the public feeds, so that other stakeholders have a say in the quality—and price—of the information available to investors.[8]

Exchanges responded to these reforms as they almost always do:[9] by suing, exercising the free[10] option the courts have given regulated entities to block changes to market structure.[11] For the exchanges, such litigation has little downside, since they can continue to extract rents from investors while courts consider their claims. And the upside is significant: good lawyers sometimes persuade courts to second-guess financial regulatory decisions exchanges don't like.[12]

---

[7] U.S. Sec. & Exch. Comm'n, Release No. 34-90610, File No. S7-03-20, Final Rule: Market Data Infrastructure at 24 (Dec. 9, 2020) (redefining "core" market data to include, among other things, odd-lot quotations, which are increasingly common in a market with high-priced stocks like Amazon; depth-of-book data, which is used to evaluate liquidity for larger trades; and auction information, which is used in determining the most important price of the trading day—the closing price).

[8] U.S. Sec. & Exch. Comm'n, Release No. 34-88827, File No. 4-757, Order Directing the Exchanges and the Financial Industry Regulatory Authority to Improve Governance of Market Data Plans (May 6, 2020).

[9] History teaches that Congressional intervention is often necessary to modernize equity market structure. Indeed, when the SEC sought to create a consolidated trade and quote system in the early 1970s, it was met with four years of "foot dragging" and constant threats of litigation. JOEL SELIGMAN, THE TRANSFORMATION OF WALL STREET 503-506 (3d ed. 2003) (quoting my predecessor, A.A. Sommer, on the SEC's efforts to get the New York Stock Exchange to implement a consolidated tape). Only when Congress intervened by passing the 1975 Securities Act amendments did NYSE acquiesce, and the SEC was able to finalize Rule 11Ac1-1 to make consolidated quote information available to the public. Senate Rep. No. 93-865, 93d Cong., 2d Sess. (1974), 5-8 (finding that questions of SEC authority to establish consolidated data feeds created unnecessary delays in modernizing markets).

[10] It's technically true, of course, that litigation is not free; the lawyers who make a living on these suits are not inexpensive. *See, e.g.*, Robert Schmidt, *Suing the Government? Call Scalia!*, BLOOMBERG NEWS (Jan. 26, 2012). But the expense of even exceptional attorneys is trivial compared to the loss of valuable rents, so the exchanges' economic decision whether to sue is usually straightforward.

[11] *See, e.g.*, Alexander Osipovich, *Nasdaq, NYSE Sue SEC to Block Market Data Overhaul*, WALL ST. J. (Feb. 9, 2021) (exchange litigation over the SEC rule requiring more detailed information in the public feed); *The Nasdaq Stock Market, LLC et al.* v. *SEC*, No. 21-1167 (Aug. 9, 2021) (same, over the SEC rule giving stakeholders a say over the construction and pricing of the public feed); *see also* Stacey Cunningham CEO, New York Stock Exchange, *We're Suing the SEC to Protect the Stock Market*, WALL ST. J. (Feb. 14, 2019) (you get the idea).

[12] *See, e.g.*, Robert J. Jackson, Jr., *Cost-Benefit Analysis and the Courts*, 78 LAW & CONTEMP. PROBS. 55, 64 (2015) (arguing that "federal judges and their law clerks are ill-suited to conduct or even to carefully review [regulatory decisions] in the area of financial regulation").

So exchanges nearly always have incentives to sue. The result is that much of the market structure reforms I worked to implement as a Commissioner still haven't happened.

That's why the Securities Exchange Reform Act of 2022 is so important.[13] Among other things, the Act would leave no doubt about the Commission's authority to require exchanges to give stakeholders a say about the pricing and quality of the public feed. Rather than litigation that is good for lawyers and lobbyists but not investors, our markets need common-sense reforms like those the SEC has adopted after years of careful consideration and consultation. The Act ensures that Congress, not exchange lawyers, will determine when those reforms arrive.

II. THE END OF EXCHANGES AS CORPORATE GOVERNANCE GATEKEEPERS

The Act would also address another vestige of our outdated regulatory structure: although our exchanges are now private, profit-making entities, when they're sued they seek the shield of governmental immunity.[14] Generally, market participants expect to be held liable for the harm that they cause, and this expectation gives them incentives to take care when dealing with others. Government actors, by contrast, are usually held harmless from liability, so that their decisions reflect optimal policy. Exchanges contend that they are regulatory entities, so should be immune from liability when their profit-maximizing decisions harm investors.

---

[13] H.R. ____, SECURITIES EXCHANGE REFORM ACT OF 2022, Section 4 ("Any self-regulatory organizations acting jointly [to] regulate a national market system (or subsystem thereof) shall include as voting members of such national market system non-SRO Voting Representatives" in the manner described" by the SEC in its August 2021 plan adoption order).

[14] U.S. Sec. & Exch. Comm'n, Release No. 69655, File No. 3-15339, *In the Matter of The Nasdaq Stock Market, LLC and Nasdaq Execution Services, LLC* at ¶ 23 (in Facebook's infamous botched IPO on Nasdaq, the exchange failed to take steps to ensure that the IPO would run smoothly, opting to open trading despite being aware of potential technical problems). Nasdaq later claimed immunity from liability in a securities class-action suit against Facebook in which Nasdaq was named as a defendant for negligent management of the IPO. The court accepted some of those arguments, but cautioned that absolute regulatory immunity would create substantial moral hazard problems. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 986 F. Supp. 2d 428, 453 (S.D.N.Y. 2013) ("While the doctrine of SRO [immunity] must continue to ensure regulatory independence, it cannot be applied to allow blanket protection for exchanges when they fail to exercise due care in their pursuit of profit."). *See also City of Providence* v. *BATS Global Markets, Inc.*, 878 F.3d 36, 47 (2d Cir. 2018) (noting that the exchanges attempted to invoke absolute immunity in a case that did "not involve any exchange conduct that [the court] could properly characterize as regulatory").

When I was a corporate lawyer—that is, before exchanges became for-profit entities—that was a better argument. Back then, exchanges developed meaningful corporate-governance rules that gave investors a chance to hold insiders accountable.[15] But today, the exchanges' profit motive leads them to pursue listings, not investor protection. To see how those incentives influence exchanges, consider WeWork's withdrawn IPO. To attract the company's listing, the *Wall Street Journal* reported, the New York Stock Exchange offered to change the cups in its cafeteria, and Nasdaq offered to create a new index called the We Fifty.[16] A regulator would have asked the hard questions about the company's business and governance that eventually led to the IPO's withdrawal; instead, exchanges followed their profit motive.

Exchanges that have exited the business of corporate governance want to have it both ways, pursuing profit when it suits them and the shield of regulatory immunity when it doesn't. But we've learned through hard experience that extending the government's protections to profit-making actors gives them reason to take excessive risk, since they privatize the gains from their actions but do not bear the losses.[17] Moreover, exchange rulebooks impose low liability limits even when exchanges are found liable for investor losses.[18] Both are inconsistent with the accountability we see in competitive markets—and both put investors at risk of losses from exchange activities shielded by government protection.

---

[15] *See, e.g.*, NEW YORK STOCK EXCHANGE LISTING STANDARDS § 303(A) (establishing, among other things, standards for director independence at publicly traded firms).

[16] Maureen Farrell, Liz Hoffman, Eliot Brown & David Benoit, *The Fall of WeWork: How a Startup Darling Came Unglued*, WALL ST. J. (Oct. 24, 2019) (in order to attract the ultimately unsuccessful WeWork IPO listing NYSE, President Stacey Cunningham offered to eliminate plastic cups in the NYSE cafeteria, and Nasdaq CEO Adena Friedman one-upped the competition by offering to create a new index, the We 50, of companies committed to sustainability.)

[17] SEC Commissioner Robert J. Jackson, Jr., Statement on Proposed Amendments to the Volcker Rule (June 5, 2018) ("Rolling back the Volcker Rule while failing to address pay practices that allow bankers to profit from proprietary trading puts American investors, taxpayers, and markets at risk.").

[18] Merritt Fox & Gabriel Rauterberg, *Stock Market Futurism*, 42 J. CORP. L. 793, 802 (2017) ("[L]iability limits are most questionable when exchanges are providing functionalities identical to those of broker-dealers. Here, as many market participants have objected, the exchanges seem to be subsidized by law with their liability limits granting them an anti-competitive advantage when providing an identical service to a broker-dealer.").

That's why the Securities Exchange Reform Act's provisions on this subject are crucial to giving American investors the market structure they deserve. By making clear that exchanges cannot claim immunity for market activities, the Act would put to rest the idea that exchanges can avoid the accountability all market participants face for their actions.[19] And by stopping exchanges from adopting rules that limit their liability, the Act would put market forces back to work in exchanges' approach to risky decisions.[20] Rather than continue to litigate these questions at investor expense, the Act would force exchanges to compete for investors' business.[21]

Because the exchanges have exited the business of corporate accountability, it's also important that you are considering today bills on the use of dual-class stock at public companies. The exchanges of the past were gatekeepers, providing basic corporate-governance guarantees to investors. But, as the WeWork experience showed, today's exchanges are racing to the bottom, attempting to attract the hottest listings despite their questionable corporate governance practices. That's why the use of dual-class stock, which gives corporate insiders more votes than ordinary investors—and thus hammerlock control of their companies—has become so widespread.[22]

---

[19] H.R. ____, SECURITIES EXCHANGE REFORM ACT OF 2022, Section 2 ("A national securities exchange shall not be immune from the jurisdiction of courts of the United States or of the States in any case in which the action is based upon an activity carried on by such exchange in the operation of the exchange's own market or the sale of products and services arising out of such activity.").

[20] *Id.* Section 3 ("The rules of the exchange do not include any rules-based limitation on the liability of the exchange for any loss, expense, damages or claims that arise out of the use of enjoyment of the facilities of the facilities or services afforded by the exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect of the business of the exchange.").

[21] I note, however, that the Act does not address the SEC's choice to use the National Market System process, rather than direct rulemaking, in addressing the conflicts of interest in the governance of the public feed. That decision, in January 2020, was a mistake; indeed, I dissented from that choice, noting my concern that "[r]ather than give investors a real say over the data that drives our markets, [the SEC chose to] invit[e] for-profit exchanges to draft their own rules on these questions," an approach that had "failed investors before." Commissioner Robert J. Jackson, Jr., *Statement on Reforming Stock Exchange Governance* (Jan. 8, 2020). I predicted then that the decision would "impose months of additional delay." *Id.* I was wrong: it is now more than two years later, and these badly needed reforms are still not in place.

[22] Dhruv Aggarwal, Ofer Eldar, Yael V. Hochberg & Lubomir P. Litovd, *The Rise of Dual-Class Stock IPOs*, 144 J. FIN. ECON. 122 (2022) (documenting a rise in dual class stock due to greater availability of private capital, giving founders greater control).

It wasn't always that way. For decades, the New York Stock Exchange refused even to list companies with nonvoting shares.[23] But after lobbying from corporate insiders in the 1980s, NYSE reversed course, and today companies crucial to the American economy and society are controlled through dual-class structures. The practice has gone so far as to allow insiders to pass control of American public companies to their chosen heirs—America's own corporate royalty.[24] The Council of Institutional Investors and Blackrock, who together represent millions of American investors, petitioned the exchanges years ago to place some limit on the use of dual class. The exchanges have done nothing to address it.[25]

That's why the bills before you establishing minimum listing standards for multi-class stock companies are so important. Since for-profit stock exchanges pursue listings, not investor protection, they cannot be expected to adopt such limits on their own. Putting to one side the optimal approach to this question, all should agree that exchanges have no economic incentive to limit the use of dual class.[26] The bill before you that would require an accountability vote at dual-class firms seven years after an IPO offers an attractive balance between accountability and the freedom visionary founders need to grow our most exciting young companies.[27]

---

[23] NYSE's famous decision in 1926 to list nonvoting shares of Dodge Motor Company led to public debate about the implications of that structure for accountability, and in 1940 NYSE announced that it would not list firms with nonvoting common stock. Before then, restrictions on shareholder voting rights were more common—although, of course, that was before the SEC even existed. *See* Stephen Bainbridge, PROFESSORBAINBRIDGE.COM, *Understanding Dual-Class Stock Part I: An Historical Perspective* (Sept. 9, 2017).

[24] SEC Commissioner Robert J. Jackson, Jr., *Perpetual Dual-Class Stock: The Case Against Corporate Royalty* (Feb. 15, 2018).

[25] *See* Ken Bertsch, Amy Borrus & Jeff Mahoney, Council of Institutional Investors, *Petition to NYSE on Multiclass Sunset Provisions*, HARV. L. SCH. F. CORP. GOV. (Nov. 2, 2018); *see also* COUNCIL OF INSTITUTIONAL INVESTORS, INVESTORS PETITION NYSE, NASDAQ (Oct. 24, 2018) ("We encourage U.S. exchanges to show global leadership on voting rights by requiring companies to either automatically convert or give shareholders the right to extend a multi-class structure." (quoting Barbara Novick, Blackrock Co-Founder and Vice Chairman)).

[26] *See* Jill Fisch & Steven Davidoff Solomon, *The Problem of Sunsets*, 99 B.U. L. REV. 1056 (2019) (contending that event-based, rather than time-based, sunsets may be preferable); *see also* NASDAQ STOCK MARKET COMPANY RULEBOOK 5900. COMPANY LISTING FEES (listing fees can provide tens or even hundreds of thousands of dollars of annual exchange revenue—per listed company).

[27] H.R. ____, TO AMEND THE SECURITIES EXCHANGE ACT OF 1934 TO IMPROVE THE GOVERNANCE OF MULTI-CLASS STOCK COMPANIES. That bill reflects empirical evidence suggesting that value-enhancing effects of dual-class structures wane over time. *See id.* at 1073 (citing Martijn Cremers, Beni Lauterbach & Anete Pajuste, *The*

But exchanges' weak incentives to help investors hold corporate insiders accountable are now coupled with the explosive growth of our private capital markets. As my friend and colleague Commissioner Allison Lee has ably explained, the growth of private markets is not an accident, but instead a consequence of deliberate policy choices.[28] Those choices have created new sources of private capital, increasing founders' power,[29] and while sophisticated early-stage investors are able to bargain for contractual provisions that protect their rights, ordinary investors in initial public offerings do not have the same opportunities.[30] Thus, any changes to the balance between public and private markets should consider the effects of expanding private markets on investors' power to hold insiders accountable in public markets.

That's why I am skeptical of bills creating new exchanges for companies that are not yet public. Although I appreciate that founders, investors, and employees in startup companies need liquidity, I am wary about providing that liquidity at the cost of public-company accountability. At a time when private capital markets are larger than ever, it is hard to see why creating venues to produce even larger private firms, with even more power over their eventual public investors,

---

Life Cycle of Dual-Class Firms (ECGI Working Paper No. 550, 2018), and Lucian Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585, 631 (2017)). While the interpretation of that evidence is contestable, *see* Fisch & Davidoff, *supra* note 26, those who favor economic analysis in the design of securities law should engage with this evidence—not gesture towards the assumption that IPO markets are efficient.

[28] SEC Commissioner Allison H. Lee, *Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy* (Oct. 12, 2021) ("[T]he single most significant development in securities markets in the new millennium has been the explosive growth of private markets.").

[29] Michael Ewens & Joan Farre-Mensa, *The Deregulation of the Private Equity Markets and the Decline in IPOs*, 33 REV. FIN. STUD. 5463 (2020) (finding that the adoption of the National Securities Markets Improvement Act of 1996 significantly increased the capital available for late-stage private startups, allowing them to grow larger prior to raising public capital).

[30] Will Gornall & Ilya A. Strebulaev, *Squaring Venture Capital Valuations with Reality*, 135 J. FIN. ECON. 120 (2020) (documenting that 56% of unicorn IPOs appear to be overvalued as they are based on the economic rights of investors in prior financing rounds, which common-stock investors in public markets do not receive). To be sure, public investors are increasingly able to access exposure to late-stage startups through mutual fund investments. Sergey Chernenko, Josh Lerner & Yao Zeng, *Mutual Funds as Venture Capitalists? Evidence from Unicorns*, 34 REV. FIN. STUD. 2362 (2021) (finding that "mutual funds are more likely to invest in late rounds, hot sectors, and larger firms").

should be a priority. Instead, the Congress and Commission should focus on ensuring that our public companies and the exchanges they trade on can be held accountable by investors.

III. The Path Ahead

Although exchange oversight has been debated for years, we are still at the early stages of understanding how the economic incentives of powerful intermediaries can distort public markets. Before closing, I want to highlight two challenges that are likely to arise for this Subcommittee, and for the SEC, because of the lack of competition in our stock markets.

First, the exchanges' power over listings also gives them control over how auctions are run to determine the closing prices of American public-company stocks. The closing price is the most important price of the trading day because it determines the net asset value of the funds that millions of Americans use to plan for their future. Yet important recent research finds that the New York Stock Exchange uses its considerable power over market design to favor its own floor brokers at the expense of price efficiency.[31] These prices are too important to American savers to allow them to be determined by anything but a competitive and efficient market.

Second, the role of retail wholesalers in modern markets deserves lawmakers' attention. Two firms—Citadel Securities and Virtu—now handle more than 70% of all off-exchange retail trading, in part because payment for order flow to online retail brokers like Robinhood draws volume to them.[32] Indeed, Citadel now handles more trading volume than the New York Stock

[31] Edwin Hu & Dermot Murphy, *Vestigal Tails? Floor Brokers at the Close in Modern Electronic Markets* (working paper, October 2021); *see also* Matt Levine, *A Vaccine With a Poison Pill*, Bloomberg Money Stuff (May 22, 2020) ("NYSE without floor brokers is a better and more efficient *electronic* exchange, but if you like floor brokers that is not quite what you want. You want whatever mysterious advantage floor brokers provide."). The New York Stock Exchange responded to this evidence not by suggesting that market structure might need further reform but by calling the study "flawed" the day it was issued, *id.*, without specifying the flaw.

[32] *See* Katanga Johnson & John McCrank, *Analysis: U.S. Mulls Shaking Up Stock Trading Rules to Aid Small Investors*, REUTERS (March 28, 2022).

Exchange.[33] Remarkably, these firms are regulated not as exchanges or alternative trading systems, but as *brokers*, despite the fact that they are not only the most important off-exchange market makers, but also the most important *on*-exchange market makers. In response to the possibility that the Commission may soon regulate payment for order flow, the firms that make and receive those payments have said—you guessed it—that they'll sue.[34]

Should those legal challenges arise, Congress should stand ready to make clear that the SEC has all the authority it needs to ensure that its rules adequately promote competition in this space. Entities with exchange-like significance for ordinary investors should be subject to rules that put those investors' interests first.[35] While it's understandable that market participants seek legal advantage wherever they can, we owe it to investors like my Mom and Dad to give them confidence that the biggest participants in our markets compete on a level playing field. Thank you once again for the opportunity to testify before you today, and I would be delighted to answer any questions you might have.

---

[33] *See id*.

[34] *See* Paul Kiernan, *Wall Street Pushes Back as SEC Targets Business Practice That Generates Billions*, WALL. ST. J. (Nov. 8, 2021).

[35] Entities of this size and scope may be able to take advantage of a particularly troubling regulatory arbitrage: although they have exchange-like importance, they are not regulated as exchanges. What's more, when we increase the scrutiny that exchanges face in our market structure, we make trading with these firms even more attractive. For example, there is evidence that requiring significant price improvement from internalizers leads to better execution quality on exchanges. *See* Edwin Hu & Dermot Murphy, *Competition for Retail Order Flow and Market Quality* (working paper, March 2022). Exchanges should, of course, be held to the highest standards for their oversight of American markets. But we should only ask them to do so on a level playing field.