JPMORGAN CHASE & CO.

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September 14, 2018

Submitted electronically

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Transaction Fee Pilot for NMS Stocks (File No. S7-05-18)

Dear Mr. Fields,

JPMorgan Chase & Co.[1] appreciates the opportunity to provide comments on the U.S. Securities and Exchange Commission's ("SEC") proposed new rule 610T of Regulation National Market System ("Reg NMS") to conduct a Transaction Fee Pilot ("Pilot")[2] for NMS stocks. The Pilot would study the effects that transaction-based fees and rebates may have on order routing behavior, execution quality, and market quality. As the holding company for one of the nation's largest broker-dealers and asset managers, as well as an NYSE-listed issuer, we are particularly interested in this Pilot.

The U.S. equities market is the largest, deepest and most liquid equities market in the world. It is arguably better functioning, more resilient and better supervised than ever before. The adoption of Reg NMS in 2005 contributed materially to this by establishing an innovative framework appropriate for the time. Reg NMS, through its comprehensive and interrelated rules, successfully spurred competition and accelerated the adoption of technological innovation. This has allowed for a migration from a concentrated, manual market to one with more diverse liquidity options, greater competition, more efficient and rapid executions, and materially greater transparency. The Order Protection Rule ("OPR") (Rule 611) was established to reinforce "the fundamental principle of obtaining the best price for investors when such price is represented by automated quotations that are immediately accessible."[3] Simply put, the OPR protects quotes of NMS stocks that are at the national best bid or best offer ("NBBO") and immediately and electronically accessible on a national securities exchange from being traded at another trading center at an inferior price. Relatedly, the Access Rule (Rule 610) established a cap on the fees any trading center could charge for accessing those now protected quotes to address the risk that "trading centers might take advantage of the requirement to protect displayed quotations by charging exorbitant

[1] JPMorgan Chase & Co. (NYSE: JPM) is a leading global financial services firm with assets of $2.6 trillion and operations worldwide. The firm is a leader in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing, and asset management.
[2] *See* Securities Exchange Act Release No. 34-82873 (March 14, 2018), 83 F.R. 13008 (March 26, 2018) (the "Release").
[3] *See* 70 F.R. at 37497 (June 29, 2005).

fees."[4] The SEC also adopted an access fee cap "to ensure the fairness and accuracy of displayed quotations by establishing an outer limit on the cost of accessing such quotations."[5]

While Reg NMS did much to modernize our equities market, it has been over thirteen years since its adoption. Since then, the U.S. equities market, its participants, and competing global equities markets have evolved substantially. Accordingly, we believe it is time for a holistic review of Reg NMS relative to its original goals as well as to ensure the U.S. market is positioned to retain its preeminence for decades to come. This should include an evaluation of all of Reg NMS's interrelated rules, including the Access Rule (Rule 610) at the core of the Pilot, as well as the inextricably linked Order Protection Rule (Rule 611). However, we appreciate that competing priorities, limited resources and other factors might make such a broad review impractical at the present time. We support the SEC prioritizing its focus on transaction fees and rebates now, in anticipation of a more holistic review of Reg NMS in the future.

We believe that the "maker-taker"[6] pricing model and the use of rebates within it by exchanges has reduced the accuracy and clarity of securities quotes, which do not reflect the economic impact of fees and rebates; contributed to greater market complexity and fragmentation; introduced inefficiencies into market executions; and unnecessarily introduced the potential for conflicts of interest between broker-dealers and their clients, which could erode market confidence. We agree with the view summarized in the SEC Division of Trading and Markets' 2015 memo to the Equity Market Structure Advisory Committee ("EMSAC") that:

> *directly eliminating or substantially impairing the maker-taker fee model by lowering the fee cap or banning the payment of rebates would address the concerns with respect to conflicts of interest, market complexity, and price transparency. . . In particular, with less pressure to be first in line to post liquidity, or otherwise ensure that your trading interest is only passive in nature . . ., the need for many complex order types would greatly diminish. In addition, price transparency also would be promoted as the displayed prices would more accurately reflect the true economic cost of trading if access fees are reduced as a result of a lowered fee cap or the absence of a fee rebate. Conflicts of interest on the part of brokers routing agency orders, particularly nonmarketable limit orders, also would be mitigated if the economic gain to be realized by the broker from posting liquidity, or economic loss from taking liquidity, were materially reduced or eliminated.*[7]

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[4] *See* 70 F.R. at 37503 (June 29, 2005).
[5] *See* 70 F.R. at 37502 (June 29, 2005).
[6] The predominant fee model in U.S. equities markets is the "maker-taker" model wherein trading centers pay broker-dealers a per share rebate to provide (i.e. "make") liquidity in securities and charge a fee to remove (i.e. "take") liquidity.
[7] SEC Division of Trading and Markets memo to the SEC Equity Market Structure Advisory Committee regarding Maker-Taker Fees on Equities Exchanges (October 20, 2015), p31, available at https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf

We encourage the SEC to address these concerns and issues with urgency and accordingly support a well-constructed Pilot to inform a rulemaking to do so. The following sets forth our views on key aspects of the Pilot.

I Pilot Design: Test Group 3 and the elimination of rebates and linked pricing

The Pilot as proposed would evaluate securities in three test groups and a control group. Test Groups 1 and 2 would evaluate the effects of fee caps set at $0.15 and $0.05 per 100 shares respectively whereas Test Group 3 would not adjust the existing cap of $0.30 per 100 shares but would prohibit the offering of rebates as well as any discounts or other pricing incentives linked to the provision or removal of liquidity. Some have argued against the inclusion of Test Group 3 and for narrowing the Pilot to purely evaluating different fee cap levels.

We strongly support the inclusion of Test Group 3. This test group will likely provide the greatest insight into how material a role rebates play in driving liquidity onto lit exchanges for securities with differing characteristics. It will additionally provide insight into where transaction fees on exchanges might naturally migrate were they subject fully to competitive forces.

We acknowledge that rebates have been used successfully by exchanges to incentivize the provision of liquidity – generally by sophisticated, non-fundamental, principal liquidity providers - on lit exchanges for securities of certain profiles. Some have argued for a trade-at rule as an alternative means to do so if rebates were to be eliminated. However, we do not believe that either rebates or trade-at requirements are necessary to achieve effective public price formation in our equity markets today. The degree to which rebates influence liquidity accumulation on lit exchanges is the subject of continued debate and cannot be known for certain at this time. This supports the inclusion of Test Group 3 in the Pilot.

II Order Protection Rule

While we applaud the SEC for considering an evaluation of the Order Protection Rule ("OPR"), we do not believe the Pilot should incorporate the elimination of protected quotation status in any Test Group. We believe doing so would add an incremental variable that would complicate an evaluation of fees and rebates and add materially to the complexity and cost of implementing the Pilot. We do believe, however, that the OPR merits further review at a later date.

III Applicable Trading Centers

We agree with the SEC that alternative trading systems ("ATSs") should not be included in the Pilot. The intent of the Pilot is to evaluate the impact of the fee cap under Rule 610(c), which does not apply to ATSs as they do not benefit from protected quote status afforded by the Order Protection Rule. Fees

charged by ATSs are already subject to competitive forces free from regulatory constraint. Including ATSs would only serve to obscure the Pilot's results.

We appreciate that the SEC hopes to develop a better understanding of how orders are routed and handled, as well as the extent to which access fees and rebates impact those decisions. We believe the recently adopted amendments to Regulation ATS[8] requiring greater disclosure of ATS operations and practices will help to improve that understanding with respect to ATSs. We additionally encourage the SEC to finalize its proposed rule on Disclosure of Order Handling Information[9] to further this goal. While these two rules will provide greater insight into order routing behavior, we do not think that they alone will be sufficient to fully understand the impact of access fees and rebates on order routing in the lit markets nor on the impacts they have on market and execution quality. Accordingly, we believe the SEC should move forward with the Pilot without delay.

IV Data

If implemented as proposed, the Pilot would require the exchanges to publicly post to their websites order routing data by security and by anonymized broker-dealer.[10]

Some broker-dealers, including J.P. Morgan[11], are concerned that this data could be reverse engineered to expose commercially sensitive, proprietary information. However, some asset managers and institutional investors, including J.P. Morgan Asset Management[12], may find this information valuable to analyze the execution quality of their orders during the Pilot period. Should the SEC choose to proceed with public disclosure of Pilot data, we recommend that broker-dealers not be identified, even on an anonymized basis, and that the SEC take responsibility for aggregating feeds from each exchange and centralizing the publication on its own site rather than requiring each exchange to do so on their websites.

V Securities

Exchange-traded products ("ETPs") have become a material proportion of the number of securities traded and volume traded in the U.S. equities market today. Excluding this class of securities, as some commenters have suggested, would diminish the utility of the Pilot's results. We also acknowledge that inclusion of ETPs requires a modified approach from stocks of operating companies. ETP issuers face strong competition within similar investment strategies, and investors' decisions could be based on factors affected by the Pilot, including spread size, daily volume, and intraday volatility. To promote equitable

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[8] *See* Securities Exchange Act Release No. 34-83663 (July 18, 2018), 83 F.R. 38768 (August 7, 2018).
[9] *See* Securities Exchange Act Release No. 34-78309 (July 13, 2016), 81 F.R. 49432 (July 27, 2016).
[10] *See* Release at pages 114-116 and 256-260.
[11] J.P. Morgan is the marketing name used by JPMorgan Chase & Co.'s wholesale businesses including its Corporate & Investment Bank ("CIB"). J.P. Morgan Securities LLC is the CIB's principal SEC registered broker-dealer.
[12] J.P. Morgan Asset Management is the marketing name for the investment management businesses of JPMorgan Chase & Co. and its affiliates worldwide.

treatment of ETP securities included in the Pilot, the SEC should consider rotating a stratified sample through each of the test groups, for the duration of the Pilot. We do not believe this approach would adversely affect the validity of Pilot data, and in fact rotating ETP securities included in the Pilot may provide further insights into the effect of transaction fees on market quality.

VI Duration

We believe that the results of the Pilot are likely to be evident rather quickly. We also acknowledge that securities included in each Test Group may be impacted by their disparate treatment relative to the status quo for the duration of the Pilot and at this stage we cannot tell whether this will be a positive or negative impact. Also, the administration of the Pilot will come at a material cost. Accordingly, we would support a substantially shorter Pilot duration than the proposed "two-year term . . . with an automatic sunset at the end of the first year,"[13] as well as the ability for the SEC to terminate the Pilot early should adequate results be gathered sooner than expected. Additionally, we recommend the establishment of a clearly articulated, non-subjective mechanism to terminate the Pilot early for individual securities or as a whole should unforeseen, negative consequences materialize.

VII Metrics

We join many commenters in recommending that the SEC clearly define a discrete set of metrics that will be evaluated to assess the impact of the Pilot on market and execution quality as well as routing behavior. We believe that those laid out by the EMSAC[14] should be closely considered as they provide a range of perspectives on the multiple variables underlying liquidity, as well as metrics that focus on market stability, routing behavior, and price.

While we encourage the SEC to be clear about the metrics it will be evaluating and that those metrics be diverse, we do not believe the SEC should narrowly prescribe the results that will or will not lead the staff to pursue changes to the current structure. Some commenters have suggested that no action should be taken if the Pilot shows the potential for degradation to liquidity on lit markets or increased costs in the form of wider bid/ask spreads relative to the status quo. We do not believe that such a narrow assessment is appropriate. The value and benefits of enhanced clarity, transparency, investor confidence, simplicity, efficiency and market accessibility are impossible to precisely determine but critical to weigh against any potential, identifiable cost.

Additionally, pursuing an updated model relative to the current one-size-fits all approach that we have today might allow the SEC to capture these benefit while materially reducing or eliminating the costs

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[13] *See* Release at page 65.

[14] *See* U.S. SEC Equity Market Structure Advisory Committee Recommendations for an Access Fee Pilot (July 8, 2016), available at https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf

that the Pilot might identify. Specifically, we support the consideration of tiered or dynamic fee structures relative to the liquidity characteristics of each security.

Conclusion

JPMorgan Chase & Co. greatly appreciates the SEC's willingness to reassess the impact of transaction fees and rebates on our equities market. We applaud the SEC for its thoughtful and well-constructed Pilot proposal. We believe that with the few, targeted changes we have recommended to ensure public data disclosure does not compromise commercially sensitive data, to allow for a shorter Pilot duration with appropriate termination mechanisms, and to more clearly define the metrics to be evaluated, that the SEC will be able to gather meaningful data to allow it to make necessary changes to enhance our market structure for decades to come and encourage greater capital formation in our public markets today.

We look forward to discussing these comments further with the Commission and staff and would be happy to provide any additional information that might be helpful.

Sincerely,

/s/ Sandra E O'Connor

Sandra E. O'Connor
Chief Regulatory Affairs Officer
JPMorgan Chase & Co.

cc: The Honorable Jay Clayton, Chairman
The Honorable Kara M. Stein, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets
Mr. David Shillman, Associate Director, Division of Trading and Markets
Mr. Richard Holley III, Assistant Director, Division of Trading and Markets

Mr. Jeffrey Harris, Director, Division of Economic and Risk Analysis