Stacey Cunningham
President

New York Stock Exchange
11 Wall Street
New York, NY 10005
T + 1[redacted]

October 2, 2018

Via E-mail & FedEx

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Transaction Fee Pilot for NMS Stocks, Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18)[1]

Dear Mr. Fields:

The US public equity markets are the most trusted, transparent, liquid and vital in the world. Our markets enable entrepreneurs to raise the most capital globally and provide investors with well-regulated and robust secondary trading, in part because of the market structure policies that have been established by a blend of American tradition, commercial innovation and regulation.

However, many market professionals are frustrated with some aspects of the market evolution following the implementation of Regulation NMS and as a result, the Transaction Fee Pilot's public comment period has elicited passionate responses. While each letter offers a unique perspective, we can generalize the majority of feedback from the buy side, the sell side, retail brokers, ETP issuers, corporate issuers, market makers and the major exchanges:

> Most members of the buy-side community support an elimination or reduction of exchange rebates. This position is primarily based on two reasons. First, some believe the existence of rebates leads to an increase in "high frequency trading" activity and the elimination of rebates would reduce excessive intermediation. Additionally, some buy-side institutions believe rebates present their brokers with incentives to route agency orders in an inappropriate way and that potential conflict should be eliminated. They believe the current Access Fee Cap of $0.0030 was the market rate in the mid-2000s, but that competition has driven the market rate lower. They generally view the "no rebate" test group in the Proposal as the ultimate test of whether brokers are routing to earn rebates instead of providing best execution to their client.
>
> Broker-dealers also believe that the $0.0030 Access Fee Cap is outdated, and attribute the growth of off-exchange trading in significant part to investors seeking to avoid exchange fees. Though the sell side believes it is routing customer orders appropriately,

[1] See Securities Exchange Act Release No. 82873 (Mar. 14, 2018), 83 FR 13008 (Mar. 26, 2018) (File No. S7-05-18) (the "Proposal" or the "Transaction Fee Pilot").

brokers also recognize the potential for conflicts to exist if clients are paying fixed rate commissions while brokers pay or collect the exchange economics.

Retail brokers were generally supportive of the Proposal but spoke with less uniformity. Some retail brokers expressed concern over the Proposal's complexity, breadth of impact and the likelihood of wider displayed markets increasing clients' costs.

ETP issuers support the Proposal, but most have reservations in applying the Proposal to their own products. They are concerned that reducing or eliminating rebates in some products but not others will result in assets gravitating toward those products with exchange-funded market making incentives. To mitigate this effect, they recommend various solutions, including wholesale exclusion of ETPs from the Proposal, placing similar products into identical rebate test groups or rotating ETPs through each of the test groups on a quarterly basis.

Nearly all corporate issuers commenting have expressed concern about the treatment of their securities under the Proposal. They share the ETP issuers' worry that their security may arbitrarily be placed in a less attractive test group relative to other investment alternatives, resulting in a worsened liquidity profile. If the Proposal proceeds, they would like the ability to opt out of participating in the experiment.

Market makers expressed a range of opinions on the Proposal. Several are concerned that reducing or eliminating incentives for liquidity provision will result in higher trading costs for retail investors. Additionally, they are troubled by the cost and complexity of the Proposal's data collection requirements, and worry that the information collected will both fail to provide insight into agency order routing conflicts and place their intellectual property at risk.

Major exchanges oppose the Proposal. Speaking for the NYSE, we are concerned about the Proposal's potential uneven impact on issuers and a weakening of displayed markets. We are also concerned about the cost and complexity of the Proposal, and are skeptical that restricting fees and collecting data only for on-exchange trading activity will illuminate the scale or nature of potential broker routing conflicts. We believe that, as proposed, it is inconsistent with the Commission's obligations under the Administrative Procedure Act. Cboe and Nasdaq have expressed similar views.

Notably, multiple leading broker-dealers voiced sympathy for the Proposal's aims, but recommended, among other things, abandoning the Proposal's multiple test group design and simply adjusting the current Rule 610 Access Fee Cap across all securities.

<u>An Alternative Pilot</u>

In our ongoing discussions with NYSE members, issuers, and investors, we have found a growing consensus that there is support for a less complex, less controversial approach.

To that end, we would like to propose an Alternative Pilot that studies the reduction of exchange fee levels, applies fee regulation uniformly to issuers, limits the potential for market data and connectivity costs to skew pilot results, and reduces the costs and risk of implementation.

The Alternative Pilot is simple:

1. **Lower the existing Rule 610 access fee cap from $0.0030 to $0.0010 in all NMS stocks.**
2. **Establish a moratorium on any fee increases for existing market data products, connectivity services and co-location.**

This Alternative Pilot design achieves a number of important goals. It addresses the primary concern raised by EMSAC and many commenters that the existing access fee cap is anachronistic. The scale of exchange fees and rebates would be reduced materially, allowing the industry and SEC to study a number of interesting policy questions, including how a lower fee cap impacts the quality of displayed quotes and whether the lower cap results in better quality fills on exchange. A $0.0010 cap would bring the fees exchanges charge for removing liquidity in line with those charged by ATSs, allowing for evaluation of the hypothesis that fee avoidance is a principal driver of the growth of off-exchange trading.

Unlike the Proposal, the Alternative Pilot would apply to all NMS stocks, thus eliminating listed companies' concern of an uneven playing field between comparable investment products. Instead of managing multiple buckets with disparate regimes per the Proposal, we would recommend the Alternative Pilot run for the same period as the Commission proposed for the Transaction Fee Pilot and use comparisons to the preceding period to evaluate its efficacy.

The Alternative Pilot would introduce a moratorium on market data and connectivity fee increases for two reasons. First, order routing behavior is influenced not just by transaction fees, but also by the all-in cost to trade on a venue. Thus, limiting changes to non-transaction fees during the Alternative Pilot period would prevent skewing of the results. Second, we recognize that a large part of the industry's support for the Transaction Fee Pilot is driven by a desire to reduce their cost to trade. We propose addressing this concern by taking fixed cost growth off the table during the Alternative Pilot and reducing the existing Access Fee Cap. This seems more prudent than introducing novel transaction-based price restrictions, such as a prohibition on rebates for liquidity provision as the Proposal suggests, which could negatively impact the displayed quote for listed companies.

We acknowledge that some proponents of the current Transaction Fee Pilot will be disappointed that this Alternative Pilot does not include an elimination of rebates. It is important to note that the elimination of rebates would not eliminate potential conflicts in the market. As long as fees vary across venues, both on- and off-exchange, the potential for conflicts exists and should be managed within the broker and client relationship. Despite this, we recognize the Alternative Pilot does not address an area of concern raised in many comment letters, especially by the buy side. Symmetrically, however, this compromise also does not include a Trade At requirement, which the NYSE has long supported, or an extension of access fee caps beyond protected quotes. We believe that preserving the current regulatory structure would afford exchanges the continued opportunity to support listed companies with market making incentives, and would give broker-dealers continued flexibility to trade on or off- exchange. The Alternative Pilot changes the levels of existing regulatory price controls without introducing new classes of restrictions, thereby limiting both the likelihood of a court challenge and the complexity of implementation.

We have preliminarily shared the above aspects of the Alternative Pilot with a number of banks, buy-side institutions, market makers and retail brokers, and found that there is wide-spread interest in pursuing a compromise approach. We believe that issuers and investors, as well as the broker-dealers and exchanges who serve them, would be better off with a pilot that takes a more holistic approach and measures the impact of a reduction in the existing Access Fee cap to $0.0010 and certainty of market data costs.

Respectfully submitted,

Stacey Cunningham

cc: Honorable Jay Clayton, Chairman
Honorable Kara M. Stein, Commissioner
Honorable Robert J. Jackson, Jr., Commissioner
Honorable Hester M. Peirce, Commissioner
Honorable Elad L. Roisman, Commissioner
Brett Redfearn, Director, Division of Trading and Markets