March 25, 2024

BRETT KITT
VICE PRESIDENT,
DEPUTY GENERAL COUNSEL
1100 NEW YORK AVE, NW
WASHINGTON, DC 20005

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

Re: Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, File No. S7-30-22, Release No. 34-96494

Dear Ms. Countryman:

Nasdaq, Inc. ("Nasdaq") writes to provide a supplemental comment on the above-referenced equity market structure reform proposal that the Securities and Exchange Commission (the "SEC" or the "Commission") published on December 14, 2022.[1] Specifically, Nasdaq submits this Letter to incorporate into the rulemaking record the attached document, which Nasdaq presented to SEC Staff on March 22, 2024.

Nasdaq appreciates the opportunity to comment further on the NMS Proposal. We hope that the Commission will consider these comments in its deliberations on this rulemaking.

Sincerely,

Brett Kitt

Cc: The Honorable Gary Gensler, Chairman, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC
The Honorable Hester M. Peirce, Commissioner, SEC
The Honorable Jaime Lizárraga, Commissioner, SEC
The Honorable Mark T. Uyeda, Commissioner, SEC
Director Haoxiang Zhu, Division of Trading and Markets

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1 See Securities Exchange Act Release No. 34-96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) (the "NMS Proposal")

Feedback and Recommendations on Equity Market Structure Reform – Proposed Reg. NMS Amendments

March 22, 2024

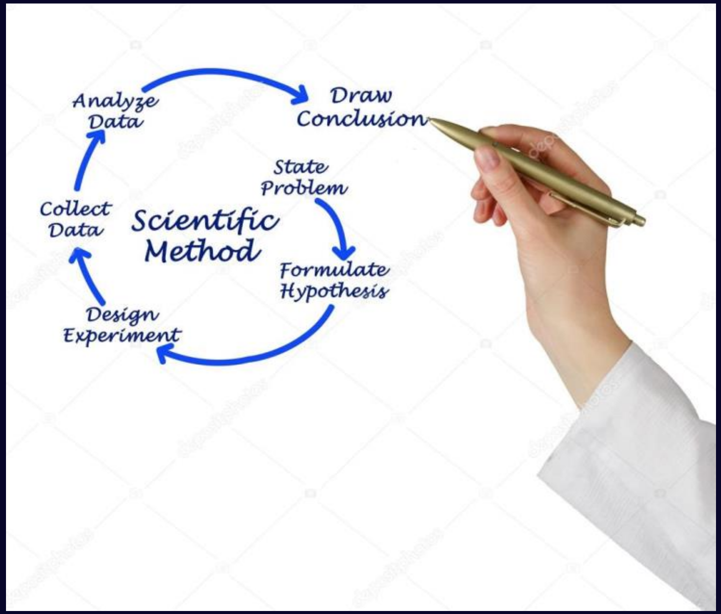
Nasdaq Suggests a Measured Approach to Market Reform

Nasdaq believes the SEC can achieve its goals through a methodical, evidence-based process that would protect the market from unintended consequences.

The below recommendation assumes that the SEC adopts one additional tick size bucket instead of the multi-bucketed approach in the December 2022 proposal.

Methodical Market Reform – We suggest changing market structure variables in a methodical, step-by-step process:

- Phase 1 : Tick size change + proportional update to fee cap in $0.005 tick stocks to $0.0015
- Phase 2 : After collecting 1 year of data and performing analysis, consideration of further fee cap reduction in stocks with $0.005 tick
- Phase 3 : After collecting additional year of data performing further analysis, consideration of fee cap adjustment in stocks with $0.01 tick



Key Takeaways - A Drastic Reduction in the Access Fee Cap Would Have Significant Adverse Effects on Markets and Investors; Even if You Doubt this View, the Risks of Being Wrong are Too Great

SEC's Mission:

- Protect investors
- Maintain fair, orderly, and efficient markets
- Facilitate capital formation

Drastic reduction in access fee will…

- Widen spreads, potentially costing investors billions of dollars
- Weaken the NBBO
- Drive more activity to the dark
- Public markets become less attractive for operating companies

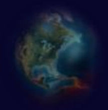
By Almost Every Measure, A Darker Future Awaits the Equities Markets if the SEC Adopts the NMS Proposals as Contemplated

*We assume that the SEC adopts tick reform ($0.01; $0.005), lowers the access fee cap ($0.001)

The World Today

Key Market Elements	Current Status
Spreads	Tight
Displayed Liquidity	Shrinking
Liquidity Accessibility	Challenged
Lit-Dark Balance	Challenged
Segmentation	High
Fragmentation	Increasing

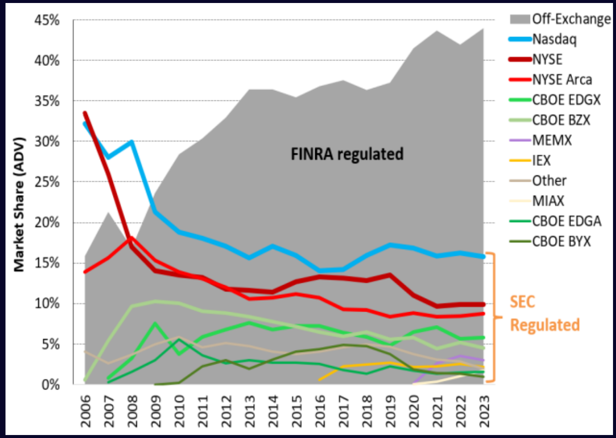
The World Tomorrow



Key Market Elements	Expected Effects
Spreads	Widen
Displayed Liquidity	Degrade
Liquidity Accessibility	Further Challenged
Lit-Dark Balance	Increased Imbalance
Segmentation	Increased
Fragmentation	Increased

By Almost Every Measure, A Darker Future Awaits the Equities Markets if the SEC Adopts the NMS Proposals as Contemplated

Is this the future we want? Is it in the interests of investors to continue this trajectory?



Market Makers
- Incentives to quote on exchange inadequate to compensate for risks
- Less quoting in less liquid symbols

Exchanges
- Fee cap reduction will not increase exchange competitiveness due to segmentation disparities
- Likely to see more speedbumps and deterioration in determinism (more quote fading)

Off-Exchange
- Competitive and structural advantage persists due to segmentation, greater freedom to offer incentives, and bi-lateral pricing; more activity will shift to less transparent alternatives – ATS's, SDPs, private/hosted ATS rooms

Brokers
- As complexity grows, smaller brokers face higher transaction and infrastructure costs driving more activity to larger brokers
- Incentives to go off-exchange increase

Issuers
- Public markets less attractive
- Potential for more volatility in listed stocks leading to higher cost of capital

Investors
- Finding and accessing liquidity more difficult and costly
- Less liquidity at NBBO

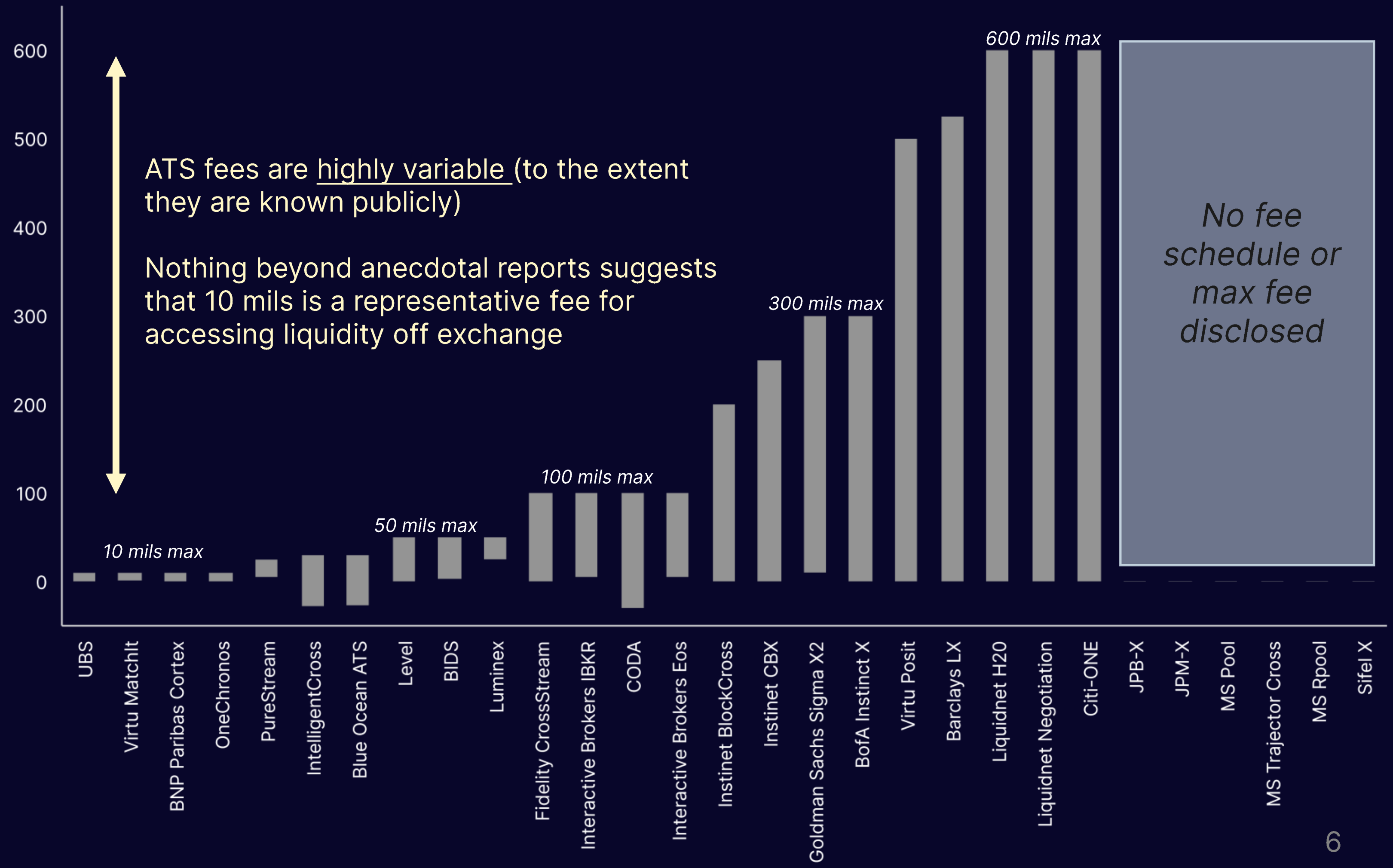
*We assume that the SEC adopts tick reform ($0.01; $0.005), lowers the access fee cap ($0.001) and harmonizes ticks across venues (but permits trading in $0.001 increments)

The Going Rate for Off-Exchange is Not $0.001

Off-exchange venues vary significantly in structure, functionality, and fees

To the extent that the Commission believes that the existing 30 mil fee cap was set arbitrarily, a new cap of <u>10 mil would be just as arbitrary</u>, or more so since it <u>would not be representative of fees either on- or off-exchange</u>

ATS Minimum & Maximum Fees



ATS Fees Are Not a Good Benchmark to Determine Exchange Fees

- Differences in fees of exchanges and ATS's reflect different regulatory structures
  - Exchange pricing is designed to attract quotes, whereas ATS pricing is designed only for trades
  - Exchanges produce quotes while ATS's in many instances leverage lit quotes to determine transaction prices
- It is appropriate for exchange access fees to exceed those of off-exchange venues
  - Exchange access fees compensate for the risk associated with posting lit quotes as well as the value associated with accessing immediate liquidity
  - ATS fees reflect an implicit discount provided through order segmentation and contra-party filtering
  - <u>Even if reducing the cap would equalize transaction costs, that alone would not necessarily enhance the competitiveness of exchanges vis-à-vis off-exchange venues</u>

Venue Type	Market Share	Count	Volume Based Tiering	Impacted by SEC Proposal	Fair Access	Set NBBO	No Order Segmen-tation	Trans-parent Rate Sheet	No Negotiated Pricing	No Bundled Pricing	No Subscriber Pricing	Reg SCI	Trade on Tick	No Trading profits for owners
Exchange	60%	16	✓	✓	✓	✓	✓[1]	✓	✓	✓	✓	✓	✓[3]	✓
Dark Pool	10%	30+	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗[2]	✓	✓
SDP & Othe	30%	200+	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗

1- speed bump markets can segment urgent customers, and some exchanges have retail programs
2- the largest ATSs can be subject to Reg SCI
3- generally, although retail progams allow exchanges to trade in tenths of a tick, and all venues can trade mid-point

Source: Nasdaq Economic Research

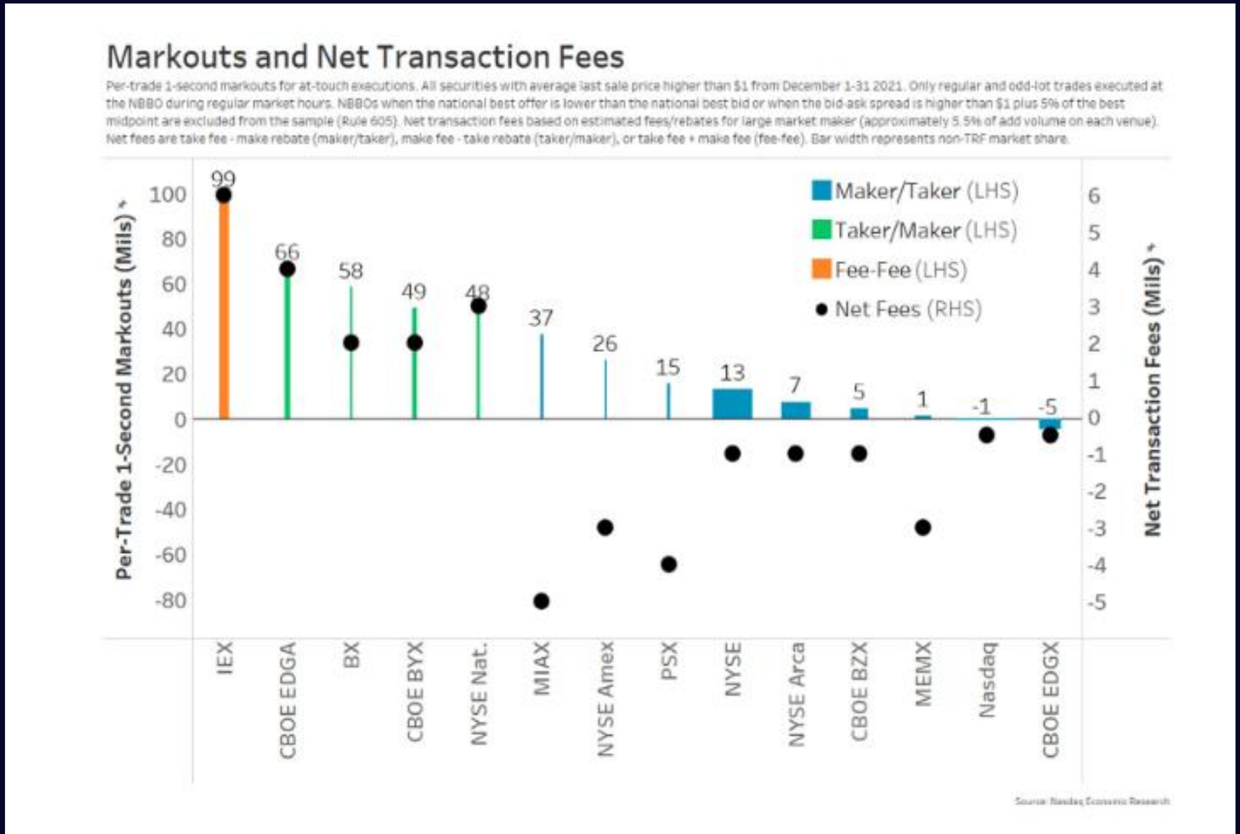
Exchange Rebates Increase Depth and Create Tighter Spreads - Reducing Trading Costs

Benefits of exchange rebates

- Rebates for liquidity providers offset adverse selection of fair access trading
- If rebates are reduced without a reduction in adverse selection, providers will widen their quotes

We expect increased market complexities with reduced rebates

- Greater focus on segmentation ➔ contra-party filtering becomes more attractive (ATS's + SDP)
- More speedbump or "quote protection" markets make accessing liquidity more complex and less deterministic
- Displayed ATS's (ECNs) make a comeback and circumvent rebates/access fee restrictions



No Evidence Supports Reducing Access Fees to Address Concerns About Broker Conflicts

- The SEC acknowledged in the Transaction Fee Pilot that it lacked data in 2019 to determine whether rebates are harmful
- The Proposal presents no new evidence in this regard
- A lower fee cap will not address broker conflicts because there will still be differentiated pricing among competing venues
- Even investment management companies dispute the argument that the maker-taker model creates harmful conflicts of interest

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attracted considerable attention and generated significant debate, focusing on the effects, both positive and negative, that exchange transaction-based pricing models may have on market quality and execution quality, with some commenters advocating action by the Commission.

The Commission is uniquely situated and vested with the responsibility under Section 11A of the Exchange Act to examine the impact that this aspect of our market structure has on our national market system. And, in light of the questions raised about the impact of these fee models and the amount of attention garnered, we believe this is an area ripe for Commission review. But, the Commission currently lacks the data necessary to meaningfully analyze the impact that exchange transaction fee-and-rebate pricing models have on order routing behavior, market and execution quality, and our market structure generally. To address this information gap, the Commission has designed the Pilot to produce data that will facilitate a more thorough understanding of the potential issues associated with exchange transaction-based pricing models. In particular, the Commission has designed the Pilot to gather data on the effect both current regulatory fee caps and rebates have on market quality and execution quality. The data gathered will assist the Commission in determining whether any changes in the current regulatory framework are appropriate and enable the Commission to make more informed and effective policy decisions. This, in turn, enables the Commission to carry out the objectives of the national market system and oversee the national securities exchanges.

As discussed fully in the proposing release, the Commission proposed a pilot to test the effect of exchange transaction fees and rebates.[5] The following chart summarizes the terms of the Pilot as adopted, which are discussed in more detail below:

TRANSACTION FEE PILOT FOR NMS STOCKS

During the SEC's March 7, 2024 Investor Advisory Committee meeting Panel on Equity Market Structure reform, T. Rowe Price stated that it has the means to monitor for distortions in broker routing activity and observes no evidence whatsoever of such activity occurring.

Why Take a Risk This Big if There is Uncertainty and No Crisis to Warrant Acting Quickly?

The chances of making an unforced error are high and the consequences would be significant

- The NBBO is the gold standard benchmark and key guardrail for every investor
- A $0.0020 decrease in rebates would translate in at least a $0.0020 increase in spread per side which would represent a 20% increase in spread for a stock that has an average spread of 2 pennies

An increase in shortfall by as little as 1 basis point could cost mutual funds $2.2 billion[1] per year

[1]Shortfall includes combination of spread and impact costs, see discussion here: https://www.nasdaq.com/articles/how-much-does-trading-cost-the-buy-side

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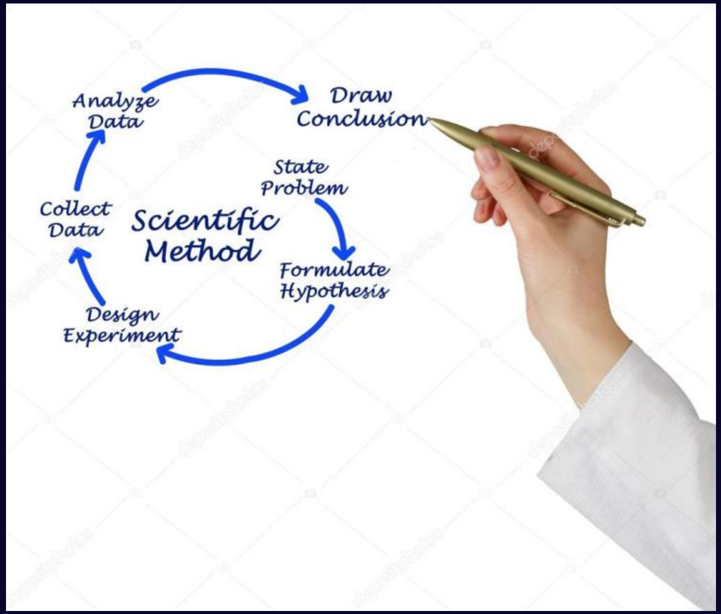

The Future Would Brighten if the SEC Maintains the Proportionality of the Access Fee

The World Today

Key Features	Current Status
Spreads	Tight
Displayed Liquidity	Shrinking
Liquidity Accessibility	Challenged
Lit-Dark Balance	Challenged
Segmentation	High
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The World Tomorrow

Key Features	Expected Effects
Spreads	Tighter where tick is right
Displayed Liquidity	Better
Liquidity Accessibility	Better
Lit-Dark Balance	Same / Better
Segmentation	Same
Fragmentation	Same

Net Impacts to Markets Neutral-to-Positive

Market Makers	• Existing tools for incentivizing on exchange quoting maintained
Exchanges	• Proportionate fee cap reduction would limit harm to displayed liquidity • Lit liquidity would benefit from tick harmonization and the ability to trade in finer increments
Off-Exchange	• Without other additional reform, structural advantage would persist due to segmentation, contra-party control, and pricing freedom
Brokers	• Better on-exchange liquidity for brokers to access
Issuers	• Public markets would not deteriorate further for issuers • Current liquidity in their stocks remains intact or improves
Investors	• Investors would benefit in many cases from tight spreads, but without offsetting costs associated with fragmentation of liquidity and erosion of the NBBO