Investors' Exchange LLC
3 World Trade Center, 58th Floor
New York, New York 10007
1 646 343 2000
iexexchange.io

April 19, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 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:

IEX is writing again to support the need for a substantial, uniform reduction in the fee cap imposed by Rule 610 of Regulation NMS. In previous letters, we have demonstrated why an adjustment aligns with the Exchange Act and the purpose for having an access fee cap:

- It aligns with changes in commissions, spreads and other elements of investor transaction costs, all of which have collapsed, while access fees have grown to represent a disproportionate share of trading costs.
- It will remove disincentives to trade on exchanges that are often the venues of last resort because of the high costs of accessing protected quotes.
- It promotes the purpose of ensuring that displayed quotations are fair and reliable indications of the true prices at which participants are willing to trade.

Nearly all commenters have recognized the need to update Rule 610(c) by reducing the cap given the harms to investors and market distortions resulting from high access fees. The current access fee cap at 30 mils is antiquated, set 19 years ago, represents a disproportionate amount of trading costs (with commissions significantly declining it no longer reflects current trading costs), has led to a rise in off-exchange trading, causes order routing conflicts and worse trading performance on exchanges, and creates distortive effects on the fairness and usefulness of protected quotations. For those reasons, a broad cross-section of participants, including virtually all institutional investors, support a substantial and equally-applied reduction in the fee cap.[1]

Despite this broad and vocal support for a substantial and equal reduction in the fee cap, some comment letters have argued that the access fee cap should only be reduced in proportion to a reduction in the tick size, with a rate of 15 mils for stocks that are assigned a tick size of one-half cent, while keeping the existing 30 mil cap for all others. In this letter, we provide additional support for the point that the adjusted access fee cap should be equal across all NMS stocks. We also provide further support for setting the cap at 10 mils per share, rather than at another level.

[1] *See* IEX Exchange Letter (October 19, 2023), footnote 3, reflecting compilation of comment letters submitted. s73022-276579-672162.pdf (sec.gov)

The Importance of an Equally-Applied Fee Cap

Setting different access fee caps based on tick size, in effect, would allow exchanges to impose a “penalty fee” for participants looking to access quotes in stocks that are less actively traded. As explained further below, there is no justification in logic or regulatory purpose to make that distinction.

An equal fee cap aligns with the fundamental regulatory purposes for the cap.

The purpose for the fee cap under Rule 610 is directly connected to the protected quote status given to exchanges by Rule 611. The Commission explained that it wanted to avoid a result where an exchange could use this status to impose outsized access fees. In our previous letters, IEX has provided substantial evidence showing how market-based trading costs (including commissions) have dramatically declined in contrast to exchange access fees that have remained fixed at the outdated, excessive rate.

Rule 611, the “protected quote rule”, by its terms applies equally to all NMS stocks. If the Commission reduces the minimum tick size for a subset of stocks, the ability of exchanges to abuse their status as protected markets will be no less for stocks that are assigned a higher tick increment. In contrast, the Commission adopted a minimum tick increment as part of Rule 612 for other reasons, including to create more competition among displayed quotes and to incentivize participants to improve displayed prices by an economically meaningful amount in order to gain execution priority.

Therefore, the fundamental purpose behind the fee cap supports a single, equally-applied limit, not one tied to multiple tick sizes. Various letters have recognized the independent reasons to reduce the access fee cap that are distinct from the reasons to reduce the minimum tick size.[2]

An equal fee cap is consistent with precedent and avoids arbitrary distinctions in the cost to access NMS stocks.

The fee cap has been equally applied to all stocks regardless of price, spread, or trading volume since it was enacted 19 years ago, consistent with the regulatory purpose as explained above. Further, institutional investors themselves have emphasized that high access fees serve as a disincentive to trade on exchanges as compared to other venues.[3] Investors also have pointed

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[2] *See*, e.g., **Letter from Vanguard Group Inc.** (March 31, 2023) (“The current $0.003 per share cap on access fees in Rule 610(c) of Regulation NMS has negative effects on markets and investors. The Commission should take an initial step toward mitigating these effects by lowering this cap to no more than one tenth of a cent per share, even if it ultimately decides not to proceed with the proposed tick size changes.”). **Letter from XTX Markets** (March 30, 2023) (an active trading firm commented that while it “has long opposed a one size fits all approach to tick sizes”, at the same time commented in support of a uniform reduction in the fee cap to 10 mils).

[3] *See* note [5] infra; *see also* Letter from **Council of Institutional Investors** (March 30, 2023) (in supporting an uniform access fee cap to 10 mils, commenting that “[t]he existing system disadvantages institutional investors”); **Letter from Ontario Teachers’ Pension Plan, Alberta Investment Management Corporation, California Public Employees’ Retirement System, California State Teachers’ Retirement System, Canada Pension Plan Investment Board, Teacher Retirement System of Texas, Arizona State Retirement System, Public Schools & Education Retirement Systems of Missouri, OMERS Administration Corporation, Vestcor Inc, UAW Retiree Medical Benefits, CDPQ, State of Wisconsin Investment Board** (March 31, 2023) (“We support the proposed

out that reducing the fee cap will help to align the interests of brokers and their customers.[4] There is no basis for the SEC to depart from this long precedent to apply multiple fee caps that double the per share cost of accessing liquidity for some stocks, based on the tick increment that is assigned to a stock at any point in time.

Exchange processing costs are exactly the same.

In previous letters, IEX has explained the benefits that exchanges have received from technological advances and increased efficiencies in determining their own costs to process orders. Those factors apply exactly in the same way for trading in all classes of securities. Processing orders in stocks that have a higher tick size or wider average spread are precisely the same as those processing orders in other stocks.

Market-based access fees do not vary by whether stocks are "tick-constrained."

As IEX has detailed in previous comments and as further supported below, alternative trading systems ("ATSs") that, like exchanges, operate "continuous book" markets for NMS stocks typically charge access fees of 10 mils or less per share. Based on our review, fees to access liquidity in NMS stocks on ATSs do not differ based on individual liquidity or spread characteristics, which, of course, are subject to change. Thus, NMS trading venues using market-based prices do not impose a higher "penalty" fee for accessing stocks that trade with less volume or at more than a one cent spread. Below, we provide further support to show that 10 mils is the relevant comparative rate charged by ATSs.

A single fee cap is simpler and more efficient.

Keeping a single fee cap across all stocks (priced greater than $1.00 per share) avoids further complexity to trading decisions from fees that can vary for the same stocks based on changes in the applicable tick size. Multiple letters from both broker-dealers and institutional investors have stressed the importance of the relative simplicity of a single cap, in supporting a limit of 10 mils.[5]

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reduction in the access fee cap for all NMS securities to $0.001 per share from the current level of $0.003" and commenting that "[t]he existing system clearly disadvantages institutional investors).

[4] *See, e.g.,* **Letter from The Capital Group Companies** ("We believe that a simple reduction in access fees across all venues to $0.001 would go a long way in mitigating order routing conflicts…")

[5] *See* **Letter from JPMorgan Chase & Co.** (March 31, 2023) ("Therefore, we recommend a simple, uniform access fee cap of $0.001 (10 mils) for all stocks trading at or above $1.00" and expressing concern that a variable approach would "add unnecessary complexity to the market"); **Letter from Invesco Ltd.** (March 31, 2023) (in supporting a 10 mil fee cap, stating that "[w]e believe that variable access fee caps would introduce unnecessary complexity, which would increase implementation costs and potential operational errors. In contrast, a standard access fee cap would add certainty at the time of order placement."); **Letter from Brandes Investment Partners, L.P.** (March 31, 2023) ("We strongly favor a single, consistent standard, rather than multiple caps tied to different tick sizes, which would create unnecessary complexity.")

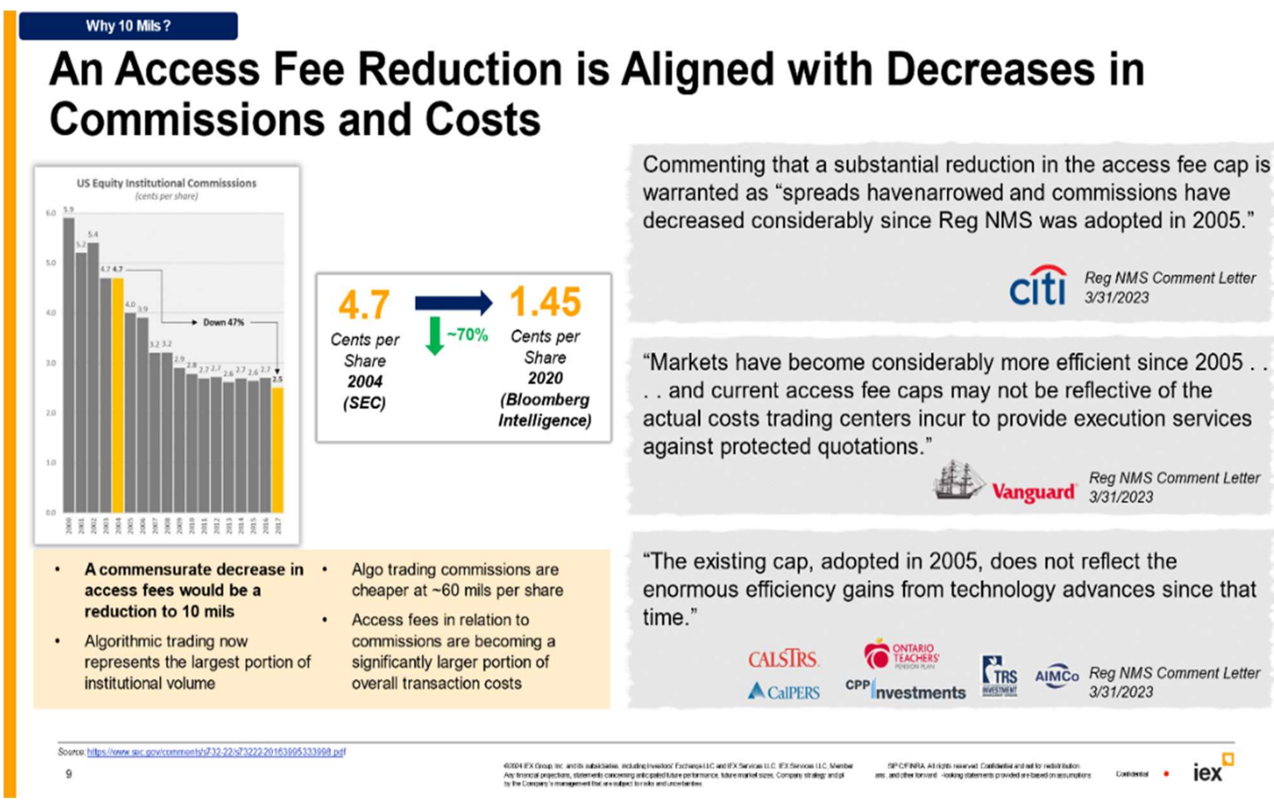
The Case for a 10-Mil Fee Cap

In determining how much to reduce the fee cap, IEX believes that the level of 10 mils is best supported by the following factors:

- It is consistent with and proportional to the reduction in commission and spread costs that have occurred since the cap was set in 2005.
- It aligns with pricing by ATSs that operate a continuous trading book in NMS stocks and therefore function most like registered exchanges.
- It appropriately limits the distortive effects of high access fees on the fairness and reliability of displayed quotes.

Comparison to other Trading Costs

As IEX has detailed in its earlier letters, a reduction in the access fee cap to 10 mils is consistent with the decline in spreads and commissions that have occurred alongside the growth in electronic and algorithmic trading. In particular, IEX has provided data showing that average commissions, which represent the most tangible and relevant cost for investors trading on exchange, have declined by about 70% since 2004. At the same time, exchanges, like many other companies, have been able to take advantage of large efficiency benefits from advances in the technology used to process and store large volumes of data. IEX believes the nature and scale of these changes justify a reduction in the fee cap by more than half its current level.



Comparison to ATS Fees

As IEX stated previously, ATSs that accept and process orders for NMS stocks in the same way as exchanges do characteristically charge in the range of 10 mils per share.[6] In response, Nasdaq provided a chart that purported to show that ATSs often charge more than 10 mils per share, based on Form ATS-N filings that disclose a range of fees that could be charged under all circumstances. But all that Nasdaq's summary shows is that trading venues that provide "special services" (i.e., non-continuous trading) charge prices that are highly variable. In fact, the ATSs that Nasdaq highlights as charging a top rate substantially larger than 10 mils provide services such as block trading and the ability to use various conditional order types that allow participants to identify trading opportunities in a venue while reserving the ability to "firm up" their interest in trading at a specific price before executing a trade. Because these services are specialized, they often warrant higher fees to compensate for the greater difficulty of executing trades based on the conditions users expect.

In contrast, and relevant to the analysis, other ATSs, like exchanges, focus primarily on operating "continuous book" markets. This type of order matching allows participants to place resting orders at multiple price levels in NMS stocks, using rules of price and time priority, and allows liquidity takers to seek immediate access to these resting orders. In general, ATSs of this type ("Immediate Access ATSs") are those that have garnered the largest market share.

ATSs are not required to disclose the different rates that are charged for different services or the rate charged for immediate access to a trading book. However, several ATSs that do offer immediate access disclose a maximum rate of 10 mils. These include UBS ATS, Virtu Matchit, One Chronos, and BNP Paribas Cortex.[7] In addition, a major agency broker, Jefferies, has disclosed in public reports a per share rate paid to ATSs that are among its top 10 venues. Those reports reflect a rate of 10 mils per share paid to UBS ATS, Sigma X2, JPMX, and Barclays ATSs, all of which are Immediate Access ATSs that have significant market share.[8]

The venues listed above collectively represent approximately 42% of all ATS volume during 2023, based on public data.[9] Further, it is undisputed that there is intense competition for continuous trading in NMS stocks among Immediate Access ATSs, with no one ATS having a dominant market share. Therefore, IEX believes this data is strong evidence that the standard comparative rate for immediate access to liquidity in NMS stocks on ATSs that offer this service is, in fact, 10 mils per share. This evidence also accords with feedback IEX has received from members that the standard rate for immediate access to ATS continuous books is 10 mils. And it supports a conclusion that when ATSs disclose a wide range of rates, with a maximum rate

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[6] *See also, e.g.*, **Letter from BlackRock** (March 31, 2023) ("Accordingly, under a uniform fee model, we would be supportive of setting the access fee cap at 10 mils. This would have the added benefit of aligning exchange fees with prevailing ATS fees and creating a more equitable competitive landscape across trading venues.")

[7] *See* Item 19 of Form ATS-N.

[8] *See e.g.*, Jefferies Rule 606 report for October–December 2023. https://mta.ihsmarkit.com/app-v2/public-report-library/public-report-library-view/Jefferies%20Group%20LLC/287

[9] *See, e.g.*, https://otctransparency.finra.org/AtsDownload

substantially in excess of 10 mils, the higher rates are charged for tailored services of the type described above.

Last, we note that Nasdaq itself, in a 2020 paper that sought to estimate ATS revenues, assumed per share revenue by ATSs of “10 mils per side”[10], which contrasts sharply with its recent statements about ATS fees.

Promoting the Fairness and Reliability of Displayed Quotations

As summarized above, the access fee charged for most trades has come to represent an outsized proportion of total investor costs and bid-offer spreads, and the extent of this distortion is magnified by the existence of both standard and “inverted” pricing venues. The Commission has emphasized the need to limit these price distortions, which go directly to the Exchange Act’s direction to the Commission to ensure the fairness, accuracy, and reliability of displayed quotes.

To draw out this point, consider a scenario in which a stock is subject to a minimum tick increment of one-half cent, and where the NBBO is set at $10.00-$10.005. The following table summarizes the difference in economic outcomes where an access fee is set at 15 mils, compared to one in which the fee is 10 mils.

Example Scenario:
NBBO in ABC stock is $10.00 - $10.005

Option 1 (15-mil cap): Broker routes a customer order for 100 shares to an exchange charging 15 mils **Outcome:** • Customer pays $0.50 in spread plus $.15 in access fees • Total Cost: $0.65 • Customer pays an access fee 50% greater than the prevailing dark pool fee	***Option 1 (10-mil cap):*** Broker routes a customer order for 100 shares to an exchange charging 10 mils **Outcome:** • Customer pays $0.50 in spread plus $.10 in access fees • Total Cost: $0.60 • Customer pays an access fee inline with prevailing dark pool fee
Option 2 (15-mil cap): Broker routes a customer order to an inverted exchange paying a 15 mils rebate to access liquidity **Outcome:** • Customer Pays $0.50 in spread and is rebated $0.15 by the inverted exchange • Total Cost: $0.35 • Customer net savings (Option 1 vs. 2): $0.30 or **60% of quoted spread**	***Option 2 (10-mil cap):*** Broker routes a customer order to an inverted exchange paying a 10 mils rebate to access liquidity **Outcome:** • Customer Pays $0.50 in spread and is rebated $0.10 by the inverted exchange • Total Cost: $0.40 • Customer net savings (Option 1 vs. 2): $0.20 or **40% of quoted spread**

As can be seen, when the access fee cap is set at 15 mils, the difference in cost to an investor, from trading on a traditional vs. inverted venue, considering both spread costs and transaction fees, can equal more than half of the total spread. When the access fee is instead set at 10 mils, the difference equals 40%, or less than half of the minimum tick size. Therefore, IEX believes that an access fee cap of 10 mils per share would best further the goal of ensuring that

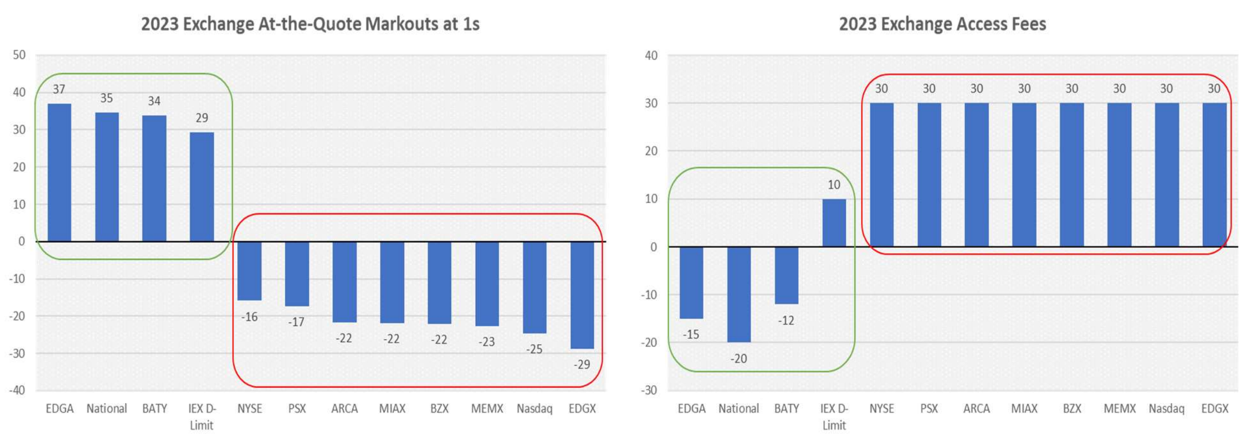
[10] *See* Nasdaq, “Dispelling the Complementary Product Theory for Market Data” (August 20, 2020): “If, given the absence of better data, we use 10 mils per side to guesstimate ‘virtual’ revenues of all dark pools (height of bars in Chart 3) we find that 18 ATSs—adding to more than 92% of all dark pool trading—have (virtual) revenues that are more than 10 times the costs of buying direct feeds from all exchanges.” https://www.nasdaq.com/articles/dispelling-the-complementary-product-theory-for-market-data-2020-08-20

displayed quotations approximate the true costs of trading on different exchanges and best promote the goal of fair competition among trading venues.

Benefits of Lower Access Fees to Displayed Liquidity

The premise that higher fees are needed to support displayed liquidity in less liquid stocks is faulty. First, IEX has explained in previous letters how rebates are used by exchanges to draw orders from ***other exchanges***, rather than to add to displayed liquidity, and how high access fees cause exchanges to be treated as venues of last resort. Second, because rebates are typically paid on a per share basis, most rebate dollars are paid on highly-liquid stocks. Third, exchanges could more easily use funding sources in addition to access fees to supplement rebates for less liquid symbols if they chose to do so. Fourth, substantial data supports that charging substantially high access fees to subsidize substantially high rebate payments leads to poor execution quality on the exchanges. For example, the below chart sets forth the execution quality on exchanges reflected in markouts and it shows that poor execution quality is directly linked to high access fees. [11]

Maximum Access Fees = Poor Execution Quality



Finally, various comment letters affirm that the high cost of access is a significant factor in driving orders away from exchanges and that a reduced fee cap will increase the volume of orders sent to access displayed quotes.[12]

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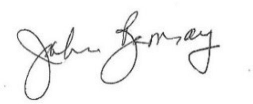
[11] Source: NYSE TAQ Market Data, Trade-to-Mid markouts calculated in mils/share.

[12] *See* **Letter from BMO Capital Markets Group** (March 31, 2023) ("We are supportive of reducing the access fee cap to 10 mils" and commenting on the "magnitude of the problems" created by the 30 mil fee cap in the market, including that it "drive[s] orders to non-exchange trading centers as market participants seek to avoid the higher fees that exchanges charge to subsidize the rebates they offer to attract liquidity"); **Letter from American Securities Association** (March 31, 2023) ("[W]e strongly support reducing access fees to 10 mils for all NMS securities because it will reduce the overall cost of exchange trading" and commenting that the "mandatory access fee of 30 mils in Reg NMS has distorted pricing and increased overall transaction costs"); **Letter from Better Markets** (March 31, 2023) ("Better Markets supports the SEC's proposed reduction of access fees from $0.003 per share, or 30 mils, to $0.001, or 10 mils" and commenting on the "multiple reasons" to adopt a reduced uniform access fee cap for all stocks,

Conclusion

There is more than ample basis, considering comments and other evidence, for a substantial reduction in the fee cap, and there is no reasonable basis to ignore precedent and unnecessarily complicate market structure by setting multiple fee caps. Finally, setting a single fee cap of 10 mils will best reflect the dramatic reduction over time in broker commissions and costs to process orders by exchanges, in addition to best aligning with the market prices currently set by continuous trading ATSs.

Sincerely,



John Ramsay
Chief Market Policy Officer, IEX

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including that a reduced access fee could increase the amount of volume routed to exchanges by making exchanges by making them less expensive venues).