

**MEMO# 31214**

May 18, 2018

## **Revised Draft Comment Letter on SEC's Proposed Transaction Fee Pilot for NMS Stocks; Member Comments Due to ICI by 5:00 p.m. (Eastern) on May 21**

[31214]

May 18, 2018 TO: Closed-End Investment Company Committee  
Equity Markets Advisory Committee  
ETF (Exchange-Traded Funds) Committee  
ETF Advisory Committee RE: Revised Draft Comment Letter on SEC's Proposed Transaction Fee Pilot for NMS Stocks; Member Comments Due to ICI by 5:00 p.m. (Eastern) on May 21

On May 10, we circulated a draft comment letter in response to an SEC proposal for a pilot program to study the effects that transaction-based fees and rebates in national market system stocks may have on order routing behavior, execution quality, and market quality generally.<sup>[1]</sup> The draft letter strongly supported the proposed pilot and urged the Commission to adopt the proposal, with minor changes, and commence the pilot as soon as possible.

An updated draft of the letter—revised to address member comments on the May 10 draft—is attached. For ease of reference, a redline showing changes from the May 10 draft also is attached. If you have comments on the draft, please send them to George Gilbert at [george.gilbert@ici.org](mailto:george.gilbert@ici.org) **by 5:00 p.m. (Eastern) on Monday, May 21. We plan to submit the letter to the SEC no later than Wednesday, May 23.**

The revised draft differs from the May 10 draft in one significant respect. The May 10 draft contained two recommendations to mitigate the potential for a transaction fee pilot to create competitive distortions in the exchange-traded product (ETP) market. First, we recommended that the SEC group ETPs that pursue a similar strategy together, either in the control group or in the same test group to ensure that similar products experience common market conditions for the duration of the pilot. Alternatively, we suggested that the Commission could instead rotate pilot securities through each of the test groups and the control group so that every pilot security would experience the full range of market conditions particular to each pilot treatment.

The revised draft retains only the rotation argument. We removed the recommendation to group similar ETPs together for two reasons. First, some members objected to the position,

and we believe the absence of a consensus would undermine the argument if it remains in the letter. Second, grouping competing products into the same test group or the control group could interfere with the Commission's ability to create stratified samples as described in the proposal, which, in turn, could affect the validity of pilot data. We believe rotating each stratified sample of NMS stocks through each of the pilot treatments would not have this potential negative consequence on pilot data and might enrich the pilot by allowing an analysis of what happens as securities travel through the different pilot groups.

George M. Gilbert  
Assistant General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

**endnotes**

[1] See ICI [Memorandum No. 31205](#), dated May 10, 2018.

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