

**MEMO# 31205**

May 10, 2018

# **ICI Draft Comment Letter on SEC's Proposed Transaction Fee Pilot for NMS Stocks; Member Comments Due to ICI by May 17**

[31205]

May 10, 2018 TO: Closed-End Investment Company Committee  
Equity Markets Advisory Committee  
ETF (Exchange-Traded Funds) Committee  
ETF Advisory Committee RE: ICI Draft Comment Letter on SEC's Proposed Transaction Fee Pilot for NMS Stocks; Member Comments Due to ICI by May 17

The SEC recently proposed a pilot program to study the effects that transaction-based fees and rebates in national market system (NMS) stocks may have on order routing behavior, execution quality, and market quality generally.<sup>[1]</sup> The data generated by the proposed pilot program would facilitate an evaluation of the need for regulatory action in this area.

ICI's draft comment letter is attached. If you have comments on the draft letter, please send them to George Gilbert at [george.gilbert@ici.org](mailto:george.gilbert@ici.org) **by close of business on May 17.**

The draft letter strongly supports the proposed pilot and urges the Commission to adopt the proposal, with minor changes, and commence the pilot as soon as possible. The draft letter includes three parts. In part I we explain that the Commission should study how exchange transaction pricing affects market quality because the conflicts of interest, decreased transparency, and unnecessary complexity associated with the transaction fees and rebates permitted by rule 610(c) of Regulation NMS may reduce market quality to the detriment of investors.

Part II of the draft letter supports the design of the proposed transaction fee pilot. This section aims to counter arguments that other market participants have advanced opposing a transaction fee pilot. The draft supports the inclusion of a no rebate bucket in the pilot program and commends the Commission for proposing a pilot that focuses on a single provision of Regulation NMS, rather than attempting to test changes to more than one aspect of market structure.

Part III of the draft letter offers suggestions to streamline the implementation of the pilot program and improve the analysis of data gathered by the pilot.

- First, we suggest that the Commission take steps to mitigate the potential for the pilot to cause anticompetitive effects in the exchange-traded product (ETP) market. To avoid potential distortions to competitive dynamics, we recommend placing ETPs that pursue a similar strategy in the same test group, which should ensure that similar products experience common market conditions for the duration of the pilot. Alternatively, we suggest that the Commission rotate pilot securities through each of the test groups and the control group to mitigate potential anticompetitive effects that could be caused by the pilot.
- Second, we urge the Commission to provide additional details about the metrics it intends to use to assess market quality before, during, and after the transaction fee pilot.
- Third, we urge the commission to adopt a rule compelling broker-dealers to provide institutional investors with granular order handling information. Institutional investors could use this information to analyze changes in the execution quality of their orders and, more broadly, market quality in general, during the pilot period.

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## [Attachment](#)

### **endnotes**

[1] *Transaction Fee Pilot for NMS Stocks*, Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018). See ICI [Memorandum No. 31135](#), dated March 16, 2018, for background and a detailed summary of the proposal.