



April 10, 2018

Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

Mr. Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street NE, Washington, DC 20549-1090

RE: S7-05-18, Transaction Fee Pilot for NMS Stocks

Dear Mr. Fields:

Brandes Investment Partners, L.P. ("Brandes") appreciates the opportunity to comment on the SEC proposal to conduct a Transaction Fee Pilot ("the pilot") for National Market System ("NMS") stocks to study the effects that transaction-based fees and rebates may have on order routing behavior, execution quality, and market quality.

Brandes is an investment adviser registered under the Investment Advisers Act of 1940, managing global equity and fixed-income assets for clients worldwide. Independently owned, the firm manages a variety of active investment strategies applying a value-investing investment philosophy. The firm's headquarter is located in San Diego, CA, with an additional office in Milwaukee, WI, and related entity offices in Toronto, Dublin and Singapore. As of December 31, 2017, the firm had approximately \$31.2 billion of assets under management. Our firm has been a strong advocate for efficient, positive change in the market place, as we believe this ultimately helps serve our clients' long-term interests.

We are supportive of the pilot overall and applaud the Commission's effort to shed light into a subject of heated debate among market participants. We hope that the data gathered will provide answers to long-standing questions, such as Commissioner Stein's inquiry on "whether the current rebate system incentivize or penalize investors"<sup>1</sup> and help shape future regulatory action. In the paragraphs below, we provide comments on specific points of the pilot that we believe are necessary for its integrity.

#### **Process: Notice and Comment Rulemaking**

We believe that the chosen form of notice and comment rulemaking, rather than an NMS plan, will allow for a varied set of public comments (industry, academics) to help shape the final format of the pilot in a more timely manner, while at the same time dissuading attempts to modify the pilot in a way that would render it ineffective. We also feel that there is an inherent conflict in exchanges, which are largely for-profit and publicly-traded entities as this point, having too heavy of an influence on a pilot that is meant to test exchange pricing mechanisms.

#### **No rebate bucket**

It is critical that the pilot include a "no-rebate bucket" along the lines laid out in the SEC's proposal. We believe this will truly provide a data set that demonstrates the effect of rebates, of any size, on order routing and execution quality while allowing exchanges to compete on pricing and execution quality without imposing further price controls on the market. Public data now shows the negative impact on investors from the maker-taker pricing model where certain exchanges pay "rebates" to brokers in exchange for posting quotes on the exchange. Rebates

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<sup>1</sup> SEC Commissioner Kara M. Stein, Remarks before Trader Forum 2014 Equity Trading Summit, 8 February 2014.

result in long queues of orders to buy and sell on the largest exchanges, which can result in delays in execution of trades for long-term investors<sup>2</sup>.

Also, with regard to the no-rebate test group, we agree with the proposal to allow discounts given to market makers, but we think it is important that this exception be limited to exchange programs that the SEC has carefully vetted and approved after determining they will not undermine the purpose of the pilot or skew the pilot results.

#### **All exchanges**

We believe it is critical to include all NMS exchanges, regular and inverted exchanges. Excluding inverted exchanges or not including all exchanges would distort routing incentives and skew the data outputs from the pilot. We understand the challenges with broadening the scope of the pilot beyond the parameters of Rule 610 and therefore accept the exclusion of ATS.

#### **Scope and Duration**

We are supportive of the pilot applying to the widest range of stocks possible and believe that the SEC proposal for 1,000 stocks in each bucket is sufficient and the right approach.

We believe the proposed 2-year period for the pilot is appropriate, as it should not only provide statistically meaningful datasets but would also prevent certain participants from attempting to influence the pilot.

#### **Pending market structure initiatives**

The Commission asks whether commenters believe that it should, before taking action on the pilot, first take final action on the Commission's proposed rulemakings concerning disclosure of order handling information and regulation of NMS stock Alternative Trading Systems, and/or issue new guidance on broker-dealers' duty of best execution. We believe the subject of the pilot is of great importance and therefore urge the Commission to not delay the pilot by waiting for completion of other initiatives. While many participants advocate a holistic reform, it remains an elusive goal seemingly more and more unreachable given the various market participants' competing interests.

Lastly, we applaud the Commission on the depth of technical expertise displayed in the proposal. It is evident that the pilot was "not an idea generated by the Commission in a vacuum<sup>3</sup>", and that it considered the input and the dedication of many. On behalf of our clients, we thank you.

Sincerely,



Brent Woods  
Chief Executive Officer



Joseph Scafidi  
Director of Trading

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<sup>2</sup> See "Incentivizing Trading Behavior Through Market Design", by Daniel Aisen, Co-founder and Head of Quantitative Strategy, IEX – December 2017 <https://iextrading.com/docs/Incentivizing%20Trading%20Behavior.pdf>

<sup>3</sup> SEC Commissioner Michael S. Piwowar, Statement on Proposed Rule to Conduct a Transaction Fee Pilot in NMS stocks, March 14, 2018. <https://www.sec.gov/news/public-statement/statement-piwowar-open-meeting-nms-2018-03-14>