FINANCIAL INFORMATION FORUM

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Via Electronic Delivery

May 24, 2018

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

Re: *Proposed NMS Rule 610T, Transaction Fee Pilot for NMS Stocks*

Dear Mr. Fields,

The Financial Information Forum ("FIF")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("The Commission") on proposed NMS Rule 610T, creating a Transaction Fee Pilot Program for NMS stocks.

In commenting on the Proposed Transaction Fee Pilot, FIF has focused on several key areas that FIF recommends that the Commission review and incorporate into the Transaction Fee Pilot Plan. FIF has also provided responses to 28 of the 90 questions in Appendix 1, which were identified as having potential implementation implications.

Overlap of the Tick Size and Transaction Fee Pilot Programs

Although the Transaction Fee Pilot proposal provides for an interim test bucket configuration, designed to potentially accommodate an overlap between the Tick Size and Transaction Fee Pilots, FIF strongly emphasizes that any overlap will increase the complexity in evaluating the results of the Transaction Fee Pilot. FIF also believes that implementing the Transaction Fee Pilot after the Tick Size Pilot has been sunset would result in a more disciplined and controlled reporting model, mitigating the risk of errors and inaccuracies in data analysis. In addition, the overlap design proposed by the Commission would divide selected small cap securities into subgroups for each test group, introducing additional variables which could potentially skew results and risk the output of inaccurate data representation and respective analysis of that data.

If the Tick Size Pilot is sunset on October 3, 2018, the post-pilot data gathering phase of the Pilot would conclude on April 3, 2019[2]. In order to ensure that the Transaction Fee Pilot does not overlap with the Tick Size Pilot, FIF recommends that a reasonable period of time (*e.g.* one month) be allowed between the forecasted end of post-pilot data gathering for Tick Size Pilot and the Transaction Fee Pre-Pilot data gathering period.

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[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

[2] SEC Rule 34-74892 at 21.

Anonymization of Reported Data

The Transaction Fee Pilot Rule Proposal provides for an anonymization methodology intended to protect the identity of broker-dealers for which data is being reported. The proposal calls for an anonymization key which would mask the display of an underlying Central Registration Depository Identifier ("CRD"). As with the Tick Size Pilot[3], FIF has concerns regarding the potential ease by which the disclosed data may be manipulated, resulting in the identification of the broker-dealer source, including specific order routing and trading practices. As with Tick Size Pilot, FIF member firms are particularly concerned that the publication of disaggregated data, even though masked, will allow market participants to determine the identity of broker-dealer trading centers. In addition, FIF members have concerns regarding access to nonanonymized data by unauthorized personnel at exchanges where data is unmasked, and ask that a process be in place which would allow access only to those individuals who are deemed as authorized agents.

FIF requests that a "grouping" methodology be outlined for categorization and aggregation of broker-dealer reported data, thereby minimizing risk of source disclosure. If the methodology categorizes broker-dealer activity in such a way, (*e.g.* by broker type) Transaction Fee Pilot data analysis can be effectively conducted while protecting the identity of individual firms. Finally, FIF requests that a period of four months transpires before the publication of order and trade details to further mask the genesis of the trade data.

Transaction Fee Pilot and Consolidated Audit Trail ("CAT") Data

The Pilot proposal inquires as to whether the data needed for results analysis could be provided from CAT data, once the CAT Repository is implemented. FIF believes that the reported data from Phase I of the CAT (Participant Reporting) would provide the necessary information, with the exception of the fees data, which would need to be gathered and accessed separately.

Technical Specifications

In order to facilitate a timely and competent implementation of Transaction Fee Pilot reporting, FIF members request that a detailed technical specification be finalized six months prior to the beginning of the pre-Pilot data gathering phase. The specification review and finalization process should include appropriate industry analysis and input from exchanges, broker-dealers and vendors to ensure accuracy and consistency of implementation. In particular, Exchanges require an appropriate period of time to construct routing tables and develop other necessary functions to comply with the Pilot's proposal.

Summary

FIF wishes to thank The Commission for this opportunity to comment on Proposed NMS Rule 610T regarding a Transaction Fee Pilot for NMS Stocks. We are hopeful that our feedback on the proposed rule, as well as our responses to the selected implementation related questions, is constructive and helpful. FIF welcomes the opportunity to further discuss any of our responses and other thoughts detailed in this letter.

[3] *See e.g.* letter from Christopher Bok, FIF to Brent Fields, SEC, *RE: SR-FINRA-2017-006* (April 5, 2017)

Sincerely,

William H. Hebert
Managing Director
Financial Information Forum

CC:

Mr. Brett Redfearn, Director, Division of Trading and Markets, SEC
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC
Mr. David S. Shillman, Associate Director, Division of Trading and Markets, SEC
Mr. Richard Holley, Assistant Director, Division of Trading and Markets, SEC

Appendix 1.

Attachment 1. Answers to 28 Implementation Related Questions on Transaction Fee Pilot Proposal

Preface:

The following 28 questions have been identified as having potential impact on the implementation of the proposed Transaction Fee Pilot. The following answers have been vetted and analyzed by FIF's Transaction Fee Pilot Working Group, comprised by both Broker-Dealers and Exchanges.

Transaction Fee and Tick Size Pilot Overlap:

9. ***If the timing of the proposed Pilot appears likely to coincide with the Tick Size Pilot, would it be reasonable to proceed simultaneously with the proposed Pilot? Why or why not? To the extent that there is no overlap between the proposed Pilot and the Tick Size Pilot, the Commission would not retain the overlap design. Do commenters agree with this approach? (q. 9)*** FIF members feel that there is no demonstrable benefit to overlap the Tick Size and Transaction Fee Pilot exercises, and that overlap may in fact increase complexity in evaluating results. FIF also believes that implementing the Transaction Fee Pilot after the Tick Size Pilot has been sunset would result in a more disciplined and controlled reporting model and mitigate the risk of errors and inaccuracies in data reporting.

27. ***Should the proposed Pilot overlap with the Tick Size Pilot? If so, does the proposed Pilot design adequately account for potential overlap with the Tick Size Pilot? Why or why not? What are the potential impacts of such overlap for equities exchanges, issuers, and other market participants? How could the Commission better design the proposed Pilot to deal with any overlap between the two pilots? (q. 27)*** As stated in the response to question # 9, FIF feels that the Tick Size and Transaction Fee Pilots should be run independently of each other, and that the Tick Size Pilot program should be sunset as a prerequisite to the launch of the Transaction Fee Pilot. The overlap design proposed by the Commission would divide selected small cap securities into subgroups for each test group, introducing additional variables which could potentially skew results and risk the output of an accurate data representation and respective analysis of that data.

Pilot Data:

38. ***Should the Commission determine the initial Pilot Securities and specify the Test Group (or Control Group) assignments at a specified minimum period of time prior to the start of the Pilot Period? Is one month sufficient, or should the notice be published closer to the start of the Pilot, such as two weeks prior? For comparison, the Commission selected securities for the Regulation SHO Pilot approximately ten months before the start of the Regulation SHO Pilot and the SROs assigned stocks to test groups one month before the start of the Tick Size Pilot. Does the experience with either of those pilots provide any insight into when the Commission should determine the initial Pilot Securities for the proposed Pilot? Or is it necessary for the Commission to select the Pilot Securities and assign them to groups prior to the pre-Pilot Period? Please explain. What, if any, operational or implementation complexities did market participants experience in relation to the timing of the assignment of securities in the previous***

pilots? (q. 38) FIF agrees that publishing the Pilot Securities and specified test or control groups one month prior to the start of the Pilot would be sufficient, providing that there were no additional changes made to those lists before Pilot launch. Broker-dealers will need to reconfigure internal routing tables and effect other operational changes which will require additional time if changes are made to the securities list and designations.

39. ***Do the procedures specified in Proposed Rule 610T(b) offer an appropriate framework for maintaining the list of securities for the proposed Transaction Fee Pilot? If not, what other arrangement should the Commission implement? If yes, do any adjustments need to be made to accommodate the proposed Pilot? (q. 39)*** FIF agrees that the procedures specified in 610T(b) offer an appropriate framework.

40. ***Is a pipe-delimited ASCII format the appropriate file format for maintaining the Pilot Securities Exchange Lists and Pilot Securities Change Lists? If not, what other format is more appropriate? Why is such alternate format preferred over a pipe-delimited ASCII format? (q. 40)*** FIF members have no issues with the use of a pipe delimited ASCII format for the Exchange Securities and respective change lists.

41. ***How long should the rule require that exchanges maintain historical versions of the lists on their public websites for public availability? Is five years appropriate, or should they be maintained on public websites for more or less time? (q. 41)*** FIF is agreeable to five years retention of the data, or whatever time period is deemed appropriate.

42. ***Should the Commission require, in order to make the data more accessible and usable from the exchanges' websites, more automated access to the data? For example, should the Commission require an exchange to make the data publicly available on its website via RSS Feeds and/or APIs? If so, which would be more preferable and why? What would be the benefits? What costs would be associated with such functionality? (q. 42)*** Assuming that the data referenced is specific symbol list / securities data, FIF members are in agreement that exchanges should make data accessible from their respective websites, or any other standard data access methodology.

43. ***Are the requirements for posting the required information on a public website, including the prohibition on access and usage restrictions, appropriate to ensure that the public and the Commission will have unfettered access to and be able to use effectively, without encumbrance, the information? Should the Commission impose any other requirements for posting the information? How would usage restrictions impact the ability to analyze the data? (q. 43)*** FIF members have no objections to the proposed posting requirements, providing there is adequate data security and controlled access.

Order Routing Data:

54. ***What data are necessary to facilitate analysis of the potential conflicts of interest associated with transaction-based fees and rebates and the effects that changes to those fees and rebates have on order routing behavior, execution quality, and market quality? Are there any specific measures that commenters believe would facilitate that analysis? For example, do commenters agree with the Joint Exchange Letter's recommendation to study the impact on broker-dealers***

and their customers of savings realized from lowered exchange transaction fees? If so, what data would facilitate that analysis? (q. 54) Orders are routed to execution venues from exchange traders and other proprietary trading entities that do not necessarily represent an agency customer, and therefore routing behaviors would not benefit the customer directly as far as any direct cost savings. As stated above, in examining the Pilot data, there should also be a distinction between order routing behavior involving an agency customer versus the trading practices of proprietary traders, who are trading and potentially capturing rebates for their internal trading accounts, including firm specific profit and loss considerations.

55. ***If the CAT repository was operational, as specified in the CAT NMS Plan, would the Commission have sufficient data to evaluate order routing behavior without this Pilot? Does the lack of the CAT affect the costs necessary for this Pilot, and if so how? (q. 55)*** FIF feels that the successful implementation of CAT Phase I (Participant Reporting)) would provide a superset of order routing and execution data sufficient to provide what is needed for Transaction Fee Pilot Analysis. However, the fees data required for the analysis would not be available in CAT and would need to be collected separately.

56. ***Should the Commission require the order routing datasets to separate out held and not-held orders? Why or why not? Are there certain shared characteristics regarding the handling of not-held orders, such as a greater likelihood to be directed to particular exchanges, that would be beneficial to assess? Please explain. (q. 56)*** FIF members point out that held vs. not-held is identifiable at the broker-dealer level, but not at the exchange routing and execution level, with the exception of exchange floor brokers who act as brokers prior to exchange execution. Any assessment of held vs. not-held for purposes of the Pilot would need to be conducted at the broker-dealer vs. exchange level.

57. ***Should the Commission also require exchanges to separately report nonanonymized datasets to the Commission? If so, what additional data would be useful? (q. 57)*** FIF has concerns about data security and risk of other parties, aside from the Commission and SRO's, being able to decipher the identity of the trading entity. As stated above, FIF members also have concerns regarding access to nonanonymized data by unauthorized personnel at exchanges where data is unmasked, and ask that a process be in place, if not already implemented, for those exchange sites, which would allow access only to those individuals who are deemed as authorized agents.

58. ***Will anonymizing the proposed data sufficiently protect confidential information? Are any further safeguards necessary? Why or why not? Are there other groupings that would be preferable, like aggregation units? If not, what benefits or limitations would there be in analyzing the data if the entirety of a broker dealer's order routing activity is aggregated? (q. 58)*** As with the Tick Size Pilot, FIF members have concerns that routing/trading data, even if anonymized, could be reverse engineered by a non-regulatory party to establish its origin. Groupings should be as general as can be accommodated and efforts should be made to minimize the risk of order originators / broker-dealers being identified. FIF further requests that a period of four months be required before the publication of order and trade details.

59. ***Should the Commission use CRD numbers to create the Broker-Dealer Anonymization Key? If not,***

why not? Are there other accessible identifying markers that the Commission should use to create the Broker-Dealer Anonymization Key? (q. 59) Even with an anonymization key, CRD numbers may make the broker-dealer easier to identify and reverse engineer the associated data. If CRD numbers are used, groupings should be more general to lessen risk of identification.

60. ***Would the equities exchanges be able to work with representatives of the Commission to validate the Broker-Dealer Anonymization Key? What additional information, if any, would be helpful for constructing the Broker-Dealer Anonymization Key? (q. 60***) FIF exchange members have confirmed that they would be willing and able to work with representatives of the Commission in validating the Broker-Dealer anonymization key.

61. ***Should the Commission require the data to be aggregated at a broader level, such as by groups of similar market participants? Why or why not? Is there a need to aggregate the activity of any market participants to protect their identity? For example, should the identity of large market participants be aggregated? What unique risks are posed for market participants whose trading constitutes a material portion of overall volume? Why would anonymization of a particular broker dealer not be sufficient for purposes of concealing the broker-dealer's identity? What impact would aggregate order routing data at a broader level have on the ability for the Commission and researchers to assess the impact of the proposed Pilot on order routing behavior, execution quality, and market quality? (q. 61)*** As stated in response to questions 58 and 59, anonymizing a particular broker-dealer would not be sufficient in concealing any specific broker-dealer's identity. Groupings / aggregations could be categorized by market participant type, such as bulge bracket institutional vs. retail, etc., and still allow for proper analysis for purposes of the Pilot.

62. ***Should the Commission collect pre-Pilot and post-Pilot data? For how long of a period should it collect such data? Is six months sufficient for each period? Should it collect such data for a shorter period, like three or four months, or a longer period? Should the lengths of the pre-Pilot and post-Pilot Periods be equal, or could the Commission instead collect pre-Pilot data for three months and post-Pilot data for six months and still have adequate statistical power to evaluate the results of the Pilot? (q. 62)*** FIF feels that six months pre- and six months post- Pilot periods are sufficient.

63. ***Should the Commission require the equities exchanges to both report the datasets to the Commission and make them publicly available on their websites? Is it sufficient to require the equities exchanges to make the datasets publicly available on their websites? To what extent would that reduce the burdens associated with complying with this provision? (q. 63)*** If the datasets are available via the exchange websites, it would be beneficial. There is no immediate demand from FIF members at this time to provide it by any other method.

<u>Implementation Period:</u>

64. ***Is a one-month period following the Commission's notice prior to the start of the pre-Pilot Period sufficient time to allow the equities exchanges to prepare for the pre-Pilot Period requirements? Why or why not? (q. 64)*** One month is sufficient providing there are no changes to Pilot securities

lists and assigned test / control groups.

65. ***Is a minimum seven-month period following the Commission's notice sufficient time to allow affected entities to establish and test mechanisms to comply with the proposed requirements? Why or why not? Should there be an alternate implementation period, such as twelve months? If so, what would be preferable and why? (q. 65)*** FIF members are in agreement that the seven-month period is sufficient to prepare for the Pilot. However, FIF members, including broker-dealers, exchanges and vendors request that any technical specification materials required to support implementation of the Pilot be reviewed with the industry and finalized in an expeditious manner, six months prior to the launch of the pre-Pilot data gathering phase, allowing necessary time for industry firms to properly scope necessary development work and assign respective resources.

66. ***What technological or systems changes are necessary to effectuate the proposed Pilot? How would any such changes differ from changes required to accommodate routine changes in exchange fee schedules? (q. 66)*** System changes for broker-dealers should primarily consist of modifications to the routing tables and other associated operational activities.

__Collection of Data and Recordkeeping__:

70. ***Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology (q. 70)*** FIF has no strong view on this other than that standard data formats and messaging methodologies be used.

__Economic Analysis:__

71. ***Is the proposed Pilot, in the form of a temporary Commission rule, necessary to achieve the objectives of this Pilot? Are there other approaches that would achieve these objectives? Has the Commission appropriately evaluated the benefits and costs of conducting successive (or potentially simultaneous) pilots? (q. 71)*** FIF members felt that using Consolidated Audit Trail (CAT) participant data, and separately including fees data, would provide the necessary data for analysis as outlined in the proposal.

73. ***Is there additional data that the Commission should gather from the proposed Pilot? Please be specific as to what this data would be and how it could inform the Commission about possible conflicts of interest related to access fees and rebates (q. 73)*** FIF has no recommendations for additional data to be used in the Pilot.

75. ***Do you believe that the proposing release accurately describes the baseline and how those current practices change under the proposed Pilot? Why or why not? Please explain in detail (q 75)*** FIF would request that additional baseline analysis be conducted with input from the industry to confirm the accuracy of what is proposed.

81. ***Do you believe that the order routing data could facilitate the reverse engineering of proprietary order routing strategies despite the daily aggregation and anonymization of the data at the broker-dealer level? Why or why not? If so, do you believe that there are alternative, safer methods of providing the order routing data that would still allow the Pilot to achieve its goals? Please explain in detail. (q. 81)*** As stated previously, if the reported data is specified at the broker-dealer level, even though the anonymization key is in place, reverse engineering is very much a concern. FIF would encourage the use of broader groupings which would protect the identity of the broker-dealers while providing logical grouping for accurate analysis of Pilot results.

85. ***Are there alternative approaches to reporting fee data in XML format that would facilitate ease of use? What are the likely costs of compliance of the proposed requirements? Please explain in detail. (q. 85)*** FIF members are supportive of the use of XML, pipe delimited ASCII, and other standard messaging and transport mechanisms.

88. ***What should be the appropriate length of the pre-Pilot Period and post-Pilot Period in terms of achieving sufficient statistical power? (q. 88).*** FIF members support six-month pre-Pilot and six-month post-Pilot periods with one month added before the pre-Pilot period.