STANY
The Security Traders Association of New York, Inc.

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Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, DC 205549-0609

Re: Transaction Fee Pilot for NMS Stocks Release No. 34-82873

Dear Mr. Fields:

The Security Traders Association of New York, Inc. ("STANY")[1] respectfully submits this letter in response to the U.S. Securities and Exchange Commission's (the "Commission" or "SEC") proposal to conduct a Transaction Fee Pilot ("the Pilot") for National Market System ("NMS") stocks with the stated intention to study the effects that transaction-based fees and rebates and, changes thereto, may have on order routing behavior, execution quality, and market quality. We are pleased that the Commission proposed the Pilot as a rule filing subject to public comment rather than as a national market system plan pursuant to Rule 608 (a) (3) of Regulation NMS and welcome the opportunity to add our comments herein.

STANY appreciates the value of reviewing and refining regulatory structure as markets evolve and has consistently favored rule-making based on empirical data. However, we have serious concerns about both the appropriateness and efficacy of the instant Pilot. Given the diversity of our membership, we have heard conflicting opinions on the advisability of a transaction fee pilot, however, as we have always done, STANY has endeavored to focus on the best interests of the equity

[1] STANY is the voice of the trader in the New York metropolitan area and represents approximately 500 individuals who are engaged in the trading of securities. STANY is committed to being a leading advocate of policies and programs that foster investor trust, professional ethics and marketplace integrity and that support education of market participants, capital formation and marketplace innovation. As an industry organization of individuals employed in the securities markets, STANY does not represent a single business or business model, but rather provides a forum for trading professionals representing institutions, broker-dealers, ATSs, and trading centers to share their unique perspectives on issues facing the securities markets.

markets in fashioning our response to the Commission's proposal. We do not believe that a transaction fee pilot is the best way to inform the long standing debate concerning the effect of access fees and rebates on order routing decisions. Reducing access fees and eliminating rebates is likely to widen spreads, impact liquidity, and worsen market quality for investors as well as effectively pick winners and losers among issuers.

The Pilot will likely cause serious disruptions to the market, have significant implications for investors and impose industry-wide costs that have not been justified by the Commission. The Commission's cost-benefit analysis is flawed and does not provide a reasoned basis for the Pilot consistent with the Commission's obligations. Moreover, as written, the Pilot does not adequately address what the Commission is trying to accomplish, is devoid of description as to how the Commission will evaluate the data collected to identify potential conflicts of interest or market and execution quality, and does not include metrics by which it will define success or failure.

Moreover, we are concerned that the Commission has not adequately addressed the costs attendant to the Pilot. Estimates for costs of implementation and coding have not been considered, nor has the Commission addressed the potential cost to investors which has been estimated to be as high as $1 billion over the life of the Pilot. Likewise, the proposal does not address the competitive impact on issuers of securities that will be subject to the Pilot's pricing restrictions and will, no doubt, be impacted by inclusion in one of the test groups

Experimenting with access fees and rebates at exchange venues is not likely to eliminate routing conflicts, which would be more directly addressed through increased transparency and disclosure. STANY recommends that the Commission explore available, less burdensome ways to evaluate its premise that exchange rebates and fees may cause broker conflicts of interest and assess the impact of exchange fees and rebates on routing decisions.

We recognize that participants in the industry, including the buy-side, have expressed concerns about possible conflicts attendant to fees and rebates. We believe that enhanced transparency and disclosure will address these concerns. The Treasury Department has recommended Rule 606 reform and clarification of best execution obligations. STANY recommends that the Commission, follow the Treasury Department's suggestions and review and enhance Rule 605 and 606 order handling disclosure requirements to include disclosure of transaction fees and rebates along with properly categorized & aggregated execution quality statistics. Requiring broker dealers to disclose their routing decisions, including fees and rebates and statistics, will permit the Commission to assess potential conflicts of interest while avoiding picking winners and losers that will naturally happen if the Pilot were to be undertaken. Certain firms already voluntarily provide a greater level of detail in their Rule 605 and 606 disclosures including information on aggregate fees paid and rebates received from execution venues. Standardization of such disclosure would add to an understanding of possible conflicts of interest far more than the proposed Pilot while avoiding serious disruptions to investors, issuers and market participants.

While STANY supports well-crafted pilot programs as a means to identify problems and solutions thereto, STANY has consistently advocated for pilots that are minimally disruptive to the industry, that are limited in scope and duration to the smallest and shortest extent necessary to make informed judgements, have defined objectives and measurements for success and, most importantly, are designed to test solutions to clearly identified problems. The proposed Pilot fails to meet these criteria.

We are not in favor of yet another expensive Pilot that, like the Tick Size Pilot, is unlikely to improve the quality of our markets; however, to the extent that the Commission moves forward with a transaction fee pilot, STANY suggests that the Commission implement the narrowest possible pilot uncomplicated by extraneous variables. As such, we suggest that there be no overlap with the Tick Size Pilot, which is scheduled to expire on October 3rd of this year. Conducting the pilots serially, will avoid adding unnecessary complexity to the Transaction Fee Pilot. As securities currently subject to the Tick Size Pilot may also be included in the Transaction Fee Pilot, STANY believes that there should be a period between the conclusion of one and the start of the other. We also urge the Commission to be mindful of the need to include an adequate period for testing, both to unwind the Tick Size Pilot and ensure that the industry is ready to implement the instant Pilot.

Given that there is a strong expectation that reducing access fees and eliminating rebates will widen spreads and impact liquidity, especially for less liquid securities and those assigned the no-rebate bucket, a smaller sample, more in line with EMSAC's recommendations, would reduce the potential adverse impacts of the Pilot while providing sufficient data to test the Commission's hypothesis. Likewise, in the interests of balancing the desire to generate objective data and the potential costs and benefits of the Pilot, particularly to investors, STANY suggests that the number of securities subject to the Pilot be limited. We believe that sufficient data can be obtained by smaller samples- making the Pilot a true pilot and less of a market structure change. EMSAC proposed a pilot with a total of 300 securities comprised of equities and ETPs with market capitalization in excess of $3 billion. We believe they recommended a constrained fee pilot in recognition of its potential impact; further stipulating that the securities be phased in beginning with ten securities per bucket and expanding to 100 securities three months later. The Commission has not provided an explanation for the ten-fold increase in securities subject to its proposal. Numerous market participants have advocated for a reduction in the size of the Pilot and have suggested either following EMSAC's recommendation or reducing the test groups to 500 shares each. Rather than selecting an arbitrary number of securities, we suggest that the Commission follow the recommendation of EMSAC. However, if the Commission believes it is necessary to expand the size of the pilot beyond 100 shares per test group, we would suggest 300 securities per group- with a cross section of market capitalizations. We believe this should ensure the collection of data from a reasonable and adequate sampling of securities.

Again, if the Commission should elect to study access fees by implanting a pilot, that pilot should be limited in duration. While the Commission's, two-year suggestion with a one-year sunset is preferable to the two year pilot suggested by EMSAC, STANY believes sufficient data can be collected in an even shorter time frame. We suggest that the Pilot be limited to, at most, a one year test period without the opportunity for an extension. A shorter experiment will reduce operational costs as well as the possible adverse impacts on investors and issuers, while at the same time yielding adequate data upon which conclusions may be drawn. As evidenced by Nasdaq's limited access fee pilot, meaningful data can be collected in months as opposed to years. We anticipate that the Pilot will have immediate impact, and suggest that the Commission be prepared to address negative consequences quickly. Therefore, STANY recommends that any Pilot, include regular review by the Commission and a predetermined means for discontinuing the Pilot in the event that the reviewed data shows undue harm to market or execution quality. This is especially important for thinly traded stocks given the potential negative impacts on liquidity which the Commission acknowledges "could be particularly severe for small or mid-capitalization securities."

If the Commission proceed with a Pilot, STANY recommends that ETPs be excluded. The premise of the Pilot does not depend on the inclusion of ETPs – the impact of access fees on trading behavior can be tested, if at all, by equity stocks without the risks attendant to inclusion of ETPs. To the extent that the Commission disagrees and includes ETPs, our concerns about the potential harm to ETPs can be reduced if those that track the same index or have similar underlying basket holdings are assigned to the same test bucket. Placing competing ETPs in different buckets could favor one ETP product over another with the same fund composition. The Commission's selection of a bucket for an ETP should not be the deciding factor in an investor's selection among ETPs. To avoid picking winners and losers, the Commission should place similar competing ETPs in the same bucket.

STANY respectfully requests that the Commission also considers the unintended consequences that the Pilot may have in conjunction with the SEC's new Rule 22e-4, Investment Company Liquidity Risk Management Programs, which would require each registered open-end fund, including open end ETPs, to establish a liquidity risk management program. Under the new Rule 22e-4, ETPs would need to classify and monitor each portfolio asset's level of liquidity as well as designate a minimum amount of portfolio liquidity, which the fund would tailor to their particular circumstances after consideration of a set of market-related factors established by the Commission.

When considering the potential impact of the Pilot in conjunction with Rule 22e-4, STANY is concerned that ETPs rely on the Authorized Participants (APs) when the price of an ETP traded on a national securities exchange below the ETP's Net Asset Value (NAV) to purchase ETP shares in the secondary market to comprise a creation unit, redeem them from the ETP in exchange for the more valuable securities in the ETP's redemption basket, or conversely when the ETP shares price exceed the NAV. The Commission has acknowledged that the liquidity of an ETP's portfolio positions is a factor that contributes to the effective functioning of the ETP and the ETP shares trading at a price that is at or close to the NAV of the ETP. Yet, while an Authorized Participant is a sophisticated professional trading firm that, for its own reasons, chooses to settle purchase and redemption transactions in large blocks of ETP shares (for its own account or for customers) directly with the ETP; APs are not agents of the ETP – they are not required to create or redeem ETP shares under any circumstances, and only do so when it is in their interest. The Pilot may impact an AP's willingness to continue to create and redeem for certain ETP products.

As a result, STANY respectfully requests that the Commission undertake, as part of its quantitative assessment, an analysis of the impact of the Pilot on ETP providers' ability to establish stable and effective liquidity risk management programs in line with the Rule 22e-4 requirements as well as the impact on keeping pricing in line with an ETP's NAV. Provisions of the Pilot should grant the Commission the ability to act immediately if required to protect underlying ETP investors.

Lastly, STANY is concerned with the confidentiality of data and recommends that a similar method to the one currently used in the Tick Size Pilot be implemented for the publication of broker-dealer routing data. We recommend that order-routing data be published on the Commission's website after 120 days and that orders be aggregated by day, security and exchange, but not by broker-dealer. This will ensure the confidentiality of sensitive order routing practices of broker-dealers from the public while still allowing the Commission access to more detailed information on how access fees effect specific broker-dealer's routing behavior. Likewise, we recommend that Commission specify limitations on the use of the Broker-Dealer Anonymization Key exclusively by exchange personnel responsible for publishing data collected in the Pilot.

STANY appreciates the consideration of its comments and welcomes the opportunity to discuss these with the Commission or its staff. Please feel free to contact the undersigned.

Respectfully submitted,

Kimberly Unger
CEO & Executive Director