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New York Stock Exchange
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July 10, 2018

Via Email & FedEx

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Transaction Fee Pilot for NMS Stocks, Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18)

Dear Mr. Fields:

Two years ago, Investors Exchange LLC (“IEX”) was an ATS that traded roughly 2% of US equity volume, consisted of about 80% dark trading activity, and listed zero securities. Two years later, it is an exchange that trades roughly 2% of US equity volume, consists of about 80% dark trading activity, and lists zero securities.

By any objective measure, IEX has failed to have a meaningful impact as an exchange. So how does it try to cling to relevance when its high-cost, low-volume business model is jeopardized? By blaming others and disparaging NYSE’s name to attract attention.

Generally, we have chosen not to respond to IEX’s business-driven marketing ploys. But now IEX has sunk to a new low. For its own commercial interest, the so-called “Investors Exchange” propagates a lie that the proposed Transaction Fee Pilot¹ would have no impact on displayed prices in the market and thus no impact on investors or issuers.² We have no choice but to respond.

Summary

NYSE Group supports the Commission’s efforts to remediate the potential conflicts that arise between broker-dealers and their customers.³ In the NYSE Letter, we explain why the Commission’s Proposal will not provide data that informs this important concern. In addition, the NYSE Letter seeks to identify the harms associated with the Proposal and why those costs outweigh the non-existent benefits of a poorly designed study.

¹ Securities Exchange Act Release No. 82873 (Mar. 14, 2018), 83 FR 13008 (Mar. 26, 2018) (File No. S7-05-18) (the “Transaction Fee Pilot” or “Proposal”).

² See Letter from John Ramsay, Chief Market Policy Officer, IEX, to Mr. Brent J. Fields, Secretary, Commission, dated June 27, 2018 (“IEX Letter”).

³ See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, NYSE Group, to Mr. Brent J. Fields, Secretary, Commission, dated May 31, 2018 (“NYSE Letter”). NYSE Group submitted the NYSE Letter and submits this letter on behalf of New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE American LLC (“NYSE American”), and NYSE National, Inc.

By contrast, IEX has chosen to use the comment process to levy unfounded accusations about NYSE's business conduct in an attempt to discredit NYSE's comment without offering a well-reasoned alternative analysis. We can only surmise that IEX has chosen to target NYSE – which is not the only commenter opposing the Proposal – in an attempt to blame the NYSE for its own business failures. IEX may claim to be an “investor's” exchange, but we should not forget that it is also a for-profit business. Presumably, its investors, including its employee shareholders, need the IEX venture to be a financial success. With its business model clearly failing despite its initial fanfare, IEX has resorted to making a mockery of the Commission's comment process in an attempt to ingratiate itself with the media, order flow providers, companies, and regulators.

- *IEX deliberately misrepresents NYSE's position on rebates*

IEX asserts that NYSE's position in its comment letter on the proposed Transaction Fee Pilot is inconsistent with reports of its prior views on rebates. This is intentionally misleading. As IEX knows, NYSE has consistently supported limits on access fees and rebates *in connection with other measures that would support the promotion of displayed liquidity*. NYSE's concerns with the Proposal are that it would diminish the ability for exchanges to promote displayed liquidity in securities included in the Pilot, without providing any offsetting incentives to display liquidity.

- *IEX asserts that NYSE's statements on investor harm are easily disproven, but fails to provide any data that would disprove such statements*

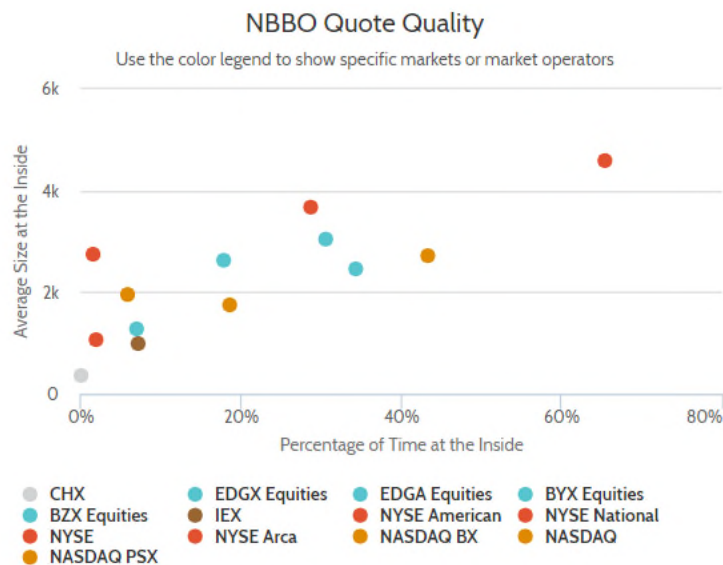
The Commission has not attempted to quantify the harm to investors as a result of the Proposal. But NYSE Group is not alone in being concerned about wider spreads and higher transaction costs for investors, and in particular, retail investors.⁴

The premise of the study NYSE submitted to the Commission is a basic tenet of economics: reducing the price paid for a good or service will result in a reduction in the quantity or quality supplied. This is as true for liquidity as it is for ‘widgets.’ Wider spreads will result, with investors consequently paying more to take liquidity. This is evident by the wider spreads currently displayed on the non-rebate exchange Cboe EDGA Exchange, Inc. (“EDGA”) compared to its sister exchange Cboe EDGX Exchange, Inc. (“EDGX”), which does pay rebates.

IEX is an exchange that does not meaningfully contribute to the best displayed prices in today's market, displaying quotes at the national best bid and offer (“NBBO”) only 7.3%

⁴ See, e.g., Letter from Joseph Kinahan, Managing Director, Client Advocacy and Market Structure, TD Ameritrade, to Mr. Brent J. Fields, Secretary, Commission, dated May 25, 2018 (“TD Ameritrade Letter”) (noting that “the Pilot has the potential to cause a significant adverse impact on retail investors”). See also Letter from Jason Clague, Executive Vice President, Operational Services, Charles Schwab, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (“Charles Schwab Letter”) (noting that “if the pilot ends up negatively impacting the quoted spread, liquidity and/or other trade execution quality metrics, then our retail clients will be much more broadly impacted in a negative way because of the pilot's large scope”).

of the time in NYSE-listed stocks (as illustrated below by Cboe)⁵ and executing 80% of its trades in the dark.⁶ Perhaps here we find IEX's motivation: if the quoted spreads on other markets worsen, IEX's spreads will look better by comparison.



- *The Transaction Fee Pilot is NOT about Market Data*

IEX falls back on the myth that exchanges pay rebates to generate demand for market data or co-location. But the Proposal is about studying broker-dealer conflicts, and not about demand for market data.

Response

1. Positive Comment Letters Do Not Mean the Proposal is Appropriate for Investors

In its letter, IEX repeatedly states that because certain investors have submitted positive comment letters, NYSE is purposefully misleading issuers and investors with its analysis of investor harm. This is untrue and offensive.

Most issues have two or more sides, and reasonable people can disagree. NYSE Group understands that many professional investment managers strongly dislike maker-taker pricing. Because the typical institution pays a fixed 'per share' commission rate to its broker (who in turn pays or earns exchange fees and rebates when executing on its client's behalf), some believe reducing the scale of exchange fees and rebates will limit

⁵ See *CBOE U.S. Equity Exchanges Market Quality*, data as of July 9, 2018, available at http://markets.cboe.com/us/equities/market_statistics/market_quality/

⁶ See <https://iextrading.com/stats/#historical-stats>.

the potential for conflicts of interest.⁷ Additionally, some institutions believe maker-taker pricing unnecessarily subsidizes quoting in sufficiently liquid securities, resulting in 'excessive intermediation' that crowds out long-term investor participation in the market.

Because of these concerns, many buy-side institutions are willing to experiment with real-world public companies and end investors to "get the data," even if the expected impact of limiting or eliminating rebates will be a deterioration of the public quote. Some investment managers may even view the potential darkening of public markets as a competitive advantage should they excel at sourcing liquidity privately.

As a listing venue, we are uncomfortable with this type of experimentation. As we explained in our first comment letter, NYSE Group believes that the Proposal is structurally flawed on many fronts.⁸ In the complex and interrelated equities markets that exist today, experimenting with exchange transaction fees alone will not generate the type of data that could be used to effectively study broker-dealer conflicts, which is the stated purpose of the Proposal. Instead, the Proposal would create winners and losers among trading venues and among issuers without addressing broker-dealer conflicts.

In our opposition to the Proposal, we acknowledge that our stance as an advocate for issuers and investors requires us to take positions that may be unpopular to some constituencies, including the investment manager owners of IEX. In contrast to the over two dozen letters from issuers that oppose the Proposal, we recognize the sheaf of supportive letters from institutional investors that are sophisticated enough to navigate the complexity of the Proposal would create. We urge the Commission to listen to the collective voice of issuers who will have no choice as to limits on transaction fees and rebates to which the Commission's Proposal will subject the trading of their securities. We advocate for them, and for all investors, including "Mr. and Mrs. 401(k)," as Chairman Clayton describes retail investors.

We repeat what we have said in our prior commentary: the Proposal undermines competition between exchanges and off-exchange venues; fails to collect relevant data; underestimates the cost to investors, issuers and exchanges; and fails to consider less burdensome alternatives. We are not alone in finding flaws in the Proposal. Both Nasdaq and Cboe Global Markets have also voiced strong opposition to the Transaction Fee Pilot.⁹

⁷ Alternatively, some institutions address this potential conflict by establishing "cost plus" fee schedules with their brokers whereby exchange fees and credits are passed through to the client.

⁸ See NYSE Letter.

⁹ See Letter from Edward T. Tilly, Chairman and Chief Executive Officer, Cboe Global Markets, to Mr. Brent J. Fields, Secretary, Commission, dated May 25, 2018 ("Cboe Letter") and Letter from Edward S. Knight, Executive Vice President and Global Chief Legal & Policy Officer, Nasdaq, to Mr. Brent J. Fields, Commission, dated May 25, 2018 ("Nasdaq Letter"). Other commenters have expressed significant concerns with the Proposal. See TD Ameritrade Letter; Letter from William P. Neuberger, Managing Director, Global Co-Head of Morgan Stanley Electronic Trading, and Andrew Silverman,

Even some of the commenters who generally support the Proposal have identified significant flaws in it. They point out that it lacks clearly defined objectives and measurement criteria, is overly broad in both scope and length, does not protect confidential information, and should exclude exchange-traded funds (“ETFs”).¹⁰ The same reason given by numerous commenters for why ETFs should be excluded – i.e., that the Proposal would pick winners and losers – would also harm operating company issuers included in the Pilot without their consent as well.¹¹

Against this broad and well-reasoned opposition, IEX opts to accuse NYSE of fearmongering and breaching the trust of issuers. Those outcries beg an obvious question: Why is IEX choosing to impugn NYSE’s integrity? One clue might be that when IEX wrote its first comment letter supporting the Proposal without attacking NYSE, it failed to generate publicity. It fared better in its second swing.¹²

2. NYSE Group is Not Opposed to Eliminating Rebates

To put it in blunt terms, NYSE Group does not oppose eliminating rebates. We have argued for ditching them in the past. But any such elimination should be done in a measured manner that creates an offsetting incentive to display liquidity, such as a “Trade At” provision. The Proposal offers no such consideration.

Because the truth does not fit in IEX’s desired publicity narrative, IEX instead deliberately misrepresents our position by equating our opposition to the Proposal with an opposition to market structure reform. Unlike IEX, we are concerned about costs to

Managing Director, Global Co-Head of Morgan Stanley Electronic Trading, Morgan Stanley & Co. LLC, to Brent J. Fields, Secretary, Commission, dated June 14, 2018 (“Morgan Stanley Letter”); Letter from Kimberly Unger, CEO/Executive Director, Security Traders Association of New York, Inc., to Brent J. Fields, Secretary, Commission, dated June 1, 2018 (“STANY Letter”); Letter from Paul M. Russo, Managing Director, Goldman Sachs, to Mr. Brent J. Fields, Secretary, Commission, dated May 24, 2018 (“Goldman Sachs Letter”); and Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission, dated May 24, 2018 (“FIA Letter”).

¹⁰ See, e.g., Letter from Mike Rask, Chairman of the Board, and James Toes, President & CEO, STA, to Mr. Brent J. Fields, Secretary, Commission, dated May 31, 2018 (“STA Letter”); Letter from Timothy J. Coyne, Global Head of ETF Capital Markets and Nathaniel N. Evarts, Head of Trading, Americas, State Street Global Advisors, dated May 25, 2018 (“SSGA Letter”); Letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities, dated May 25, 2018 (“Citadel Letter”); and Letter from Douglas A. Cifu, Chief Executive Officer, Virtu Financial, to Mr. Brent J. Fields, Secretary, Commission, dated May 23, 2018 (“Virtu Letter”).

¹¹ See, e.g., Letter from Kevin Cronin, Global Head of Trading, Invesco, to Brent J. Fields, Secretary, Commission, dated May 25, 2018 (“Invesco Letter”) (arguing that ETFs should be excluded from the pilot because it “has the potential to create ‘winners’ and ‘losers’ amongst competing ETPs, solely based upon which test group an ETP is placed in as compared to its competitors”). See *also* Morgan Stanley Letter (“[I]f two ETPs with similar underliers or that track the same index are placed in two different test groups, the Pilot would inevitably determine winners and losers.”).

¹² See *infra* note 15.

investors due to wider spreads that would result from the Proposal. And also unlike IEX, we are concerned about how the Proposal would pick winners and losers among issuers.

3. IEX Falsely Equates Rebate Elimination to Market Data and Connectivity Fees

IEX used its most recent letter to double down on its false narrative. Stuck now with the concocted theme that NYSE Group is opposed to eliminating rebates, IEX makes a leap, claiming that it is actually Intercontinental Exchange, Inc. (“ICE”), the owner of NYSE Group, that is seeking to maintain rebates to boost market data and connectivity revenue.

Attacking market data revenue may be a tempting target for IEX, but the Transaction Fee Pilot is not about market data. This misdirection fits with IEX’s tired marketing campaign that it is protecting investors from being “front-run” by proprietary traders who buy market data from exchanges in return for rebates to provide liquidity. That attack has nothing to do with the Proposal, but it does generate media interest.

The rebate issue, as framed by the Proposal, is unrelated to demand for market data. Many global markets, including futures markets operated by ICE, operate without maker-taker pricing and have healthy market data businesses. Both the buy-side and sell-side use proprietary exchange market data to facilitate many different types of their own innovations to grow their businesses. IEX presents no evidence that this type of market data use is related to exchange transaction fee pricing.

In addition, despite IEX’s repeated unsupported claims, NYSE Group is in the business of serving all market participants interested in the use of its exchanges and facilities. The services we offer, including market data offerings and co-location, are highly regulated and offered on equal terms to all and in fact are used by a very wide range of participants.

Likewise, the NYSE Group co-location services provide regulated, equal access to our market data and trading platforms, access that neither dark pools nor IEX provide. For all of IEX’s claims of fairness, it has no control over either how customers gain access to IEX at the first IEX entry point or the costs associated with getting closer access to that entry point. It is remarkable that IEX accuses other exchanges of “selling speed,” while it facilitates unequal access to its POP through a lack of regulated co-location space.

4. Issuer Opposition to the Proposal is Relevant

Over the last 10 years, NYSE has helped entrepreneurs raise over \$1.56 trillion in capital. On the day of an issuer’s IPO, our data indicate that secondary trading on NYSE is 36% less volatile than on other listing markets.¹³ Once listed, NYSE offers a high-touch trading model with over 50% less volatility for the open and close.¹⁴ NYSE

¹³ Based on NYSE research on 2017 IPO activity.

¹⁴ Based on NYSE research on 2017 trading activity.

also provides a wealth of services to issuers, including access to a network of the world's best companies and a suite of investor relations tools. With over 35 media outlets broadcasting daily from the NYSE trading floor, NYSE offers unparalleled visibility and promotion for its issuers. And NYSE advocates for its issuers before regulators and legislators. These are some of the reasons why a company chooses to list on the NYSE.

In contrast, rebates have little to do with why a company would choose to list on the NYSE. Rebates are a means to promote displayed, tight quotes, which also benefit issuers, but as noted above, rebates are not the only means to do so. The problem with the Transaction Fee Pilot is not that rebates would be eliminated, but that it would experiment cavalierly with transaction fees – including rebates – in a way that would harm issuers and pick winners and losers.

As part of its advocacy on issuers' behalf, NYSE reached out to listed companies to draw their attention to this issue. Both IEX's CEO and its related lobbying arm have sought to portray this advocacy effort as an improper use of leverage by the regulator of an issuer.¹⁵ Quite frankly, we are dismayed that the most senior executive of a registered exchange would accuse the NYSE, without any basis, of misusing its regulatory authority.¹⁶ IEX's and its CEO's attempt to bring into doubt the sincerity of the views expressed by issuers in their comment letters is insulting to those issuers. However, because IEX cannot credibly argue that issuers in the Pilot would be unaffected, it resorts to the blaming the NYSE.¹⁷

Notwithstanding IEX's smear campaign and accusation that we are purposefully misleading issuers, over two dozen listed companies have chosen to submit comment letters opposing the Proposal.¹⁸ Companies that have met the NYSE-listing standards are sophisticated and self-interested actors. If they choose to write a letter opposing the Proposal, it is because they have independently concluded that it is in their best interest to do so (and for reasons similar to why ETF issuers have expressed that they do not want an ETF included in a test bucket). To insinuate, as IEX has, that they are naïve or were misled is offensive to issuers.

¹⁵ See Letter from Tyler Gellasch, Executive Director, Healthy Markets Association, to Mr. Brent J. Fields, Secretary, Commission, dated July 6, 2018; Interview with IEX CEO Brad Katsuyama on Bloomberg TV on July 9, 2018 ("Katsuyama Interview").

¹⁶ The NYSE Listed Company Manual ("LCM") sets forth the circumstances when an issuer may be suspended from dealings or removed from listing on the NYSE. These standards, which are rules filed with the Commission, are designed for investor protection. Unless an issuer falls below specified continued listing criteria set forth in the LCM, the NYSE does not have authority to bring a regulatory action against an issuer. In addition, any regulatory actions relating to a listed company are handled by NYSE Regulation, which operates independently within NYSE Group.

¹⁷ IEX has parlayed its negative portrayal of NYSE into a publicity campaign. In the Katsuyama Interview, IEX's CEO continues to assert the same false narrative as the IEX Letter.

¹⁸ See Appendix.

IEX's lack of concern about the impact of the Proposal on issuers and its indifference to issuer views is disappointing. But it is not surprising, because IEX has no issuer constituents who would be harmed by the Proposal.

5. NYSE's Investor Cost Study is Based on Straightforward Logic

In another part of its letter, IEX attacks the NYSE Group estimate that the Proposal would cost investors approximately \$1 billion. NYSE Group is not alone in its concern over wider spreads and higher transaction costs for investors, which is why numerous thoughtful commentators have sought to exclude ETFs from the Transaction Fee Pilot.¹⁹

The purpose of NYSE Group's analysis was not to predict the future with perfect accuracy, or to consider every possible variable that might change under the government's misguided Proposal to impose new price controls. Rather, our intent was to highlight the reality that the Proposal will generally *benefit* intermediaries and *harm* investors who cross the spread. Our assumptions may be imperfect, but the IEX criticisms, issued without any alternative analysis, were devoid of any basis.

The premise of our study was simple:

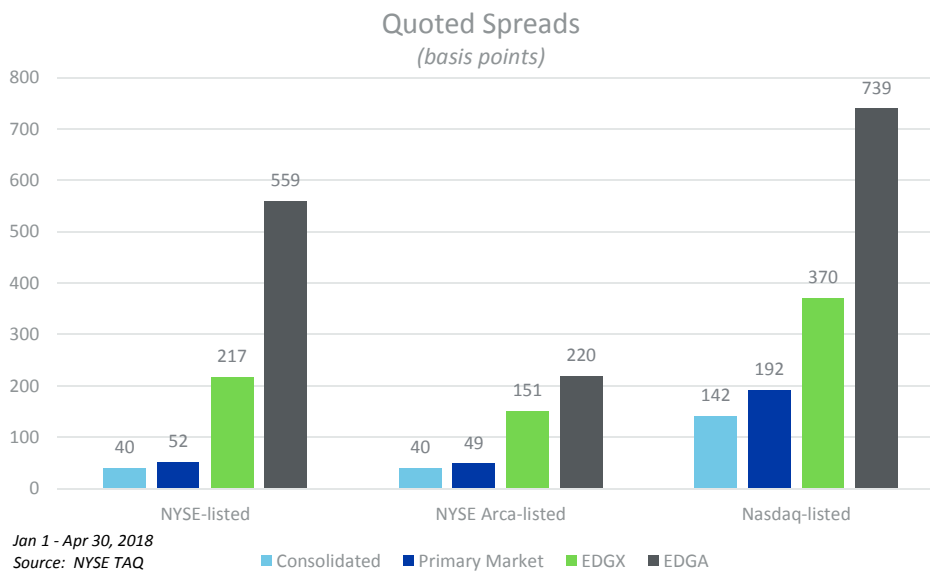
- Reducing incentives for liquidity providers will result in wider displayed quotes, increasing the cost to take liquidity
- End investors take more liquidity than they provide
- Most investors pay fixed commissions (*i.e.*, they won't receive the benefit of a lower access fee)

To drill down further on this premise, market makers are currently responsible for providing two-sided liquidity continuously in over 8,000 Regulation NMS stocks. When making quotes, liquidity providers consider numerous factors to price their interest, including, in no particular order:

- Their view of the security's fair value
- Current supply and demand for the product and correlated instruments, as reflected by public market data and insights from over-the-counter trading
- Their firm's inventory and risk limits
- Anticipated toxicity of the liquidity-taking order flow
- Execution venue fees and/or rebates
- Fixed costs of trading on any given venue
- FINRA Trading Activity Fees, if applicable
- Exchange Act Section 31 fees
- Determinism of the exchange technology on which the order will be place (including any impediments to cancel or reprice their exposure such as an exchange delay mechanism)

¹⁹ See, *e.g.*, Charles Schwab Letter; Morgan Stanley Letter; SSGA Letter; and Invesco Letter.

Change to any one of these factors will be incorporated into the quoted prices. Although exchange fees and rebates are not the only factor considered, they are a meaningful one. This is illustrated in the chart below by the difference in quoted spreads on EDGA (a flat-fee venue until July 2018) and EDGX (a maker-taker venue), two venues virtually identical but for their exchange fee schedules.



Our study estimated that spreads would modestly widen by one percent. Compared to the real-world observed difference between the spreads on EDGA and EDGX, our model's underlying assumptions appear conservative.

The next premise from our study is also straightforward: investors, including retail investors, generally take liquidity rather than provide liquidity. In other words, end investors will pay the spread more often than they earn it, so the net impact of a wider spread will be higher investor cost.²⁰

In addition, most investors pay fixed commissions to their brokers and are not directly charged exchange transaction fees or receive exchange rebates. In these cases, the end investor will pay more to take liquidity (because they will buy at higher prices and sell at lower prices) but the lower exchange fee under the Proposal will be enjoyed by their broker.

Notwithstanding widely-held concerns about the impact of wider spreads on investors, including those noted by commenters,²¹ IEX now claims that the quoted spread is *not* a relevant measure of cost for investors. IEX instead suggests that because institutional investors may trade a position greater than the displayed size at the NBBO, the displayed quote is irrelevant.

²⁰ See also TD Ameritrade Letter.

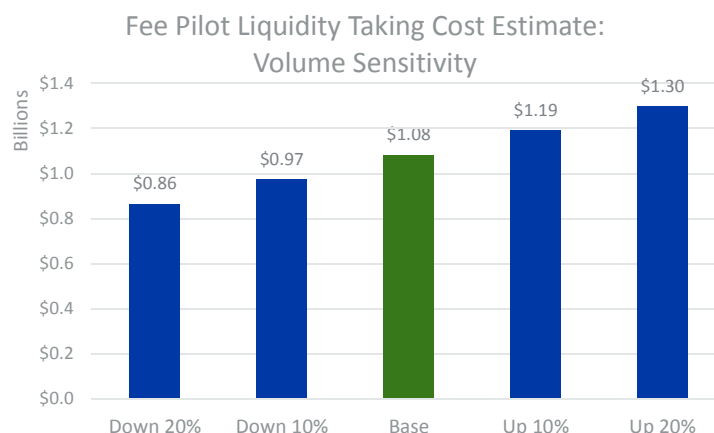
²¹ See *supra* notes 4 and 9.

But then IEX makes a point that supports our analysis: “[o]nly in cases where a market participant is attempting to buy or sell, on an exchange, fewer shares than the total amount displayed at the national best bid or offer (“NBBO”) is the quoted spread particularly relevant.”²² IEX just helpfully described virtually all trading on exchanges.

IEX’s own trade reports to the consolidated tape, for example, show an average fill size of about 154 shares for the month of June.²³ Furthermore, the statistics on IEX’s own web site show that 75% of its executions are less than 200 shares.²⁴

Regardless of the size of the overall position, the individual orders that are sent to exchanges are almost all small in scale and meet the specific definition of order flow likely to be impacted by the quoted spread that IEX itself advocates.

IEX next challenges our analysis by claiming that NYSE only considered trading at the quoted bid or offer. Our model makes a simplifying assumption by applying projected cost of the average wider spread to average daily market volume. Of course, some volume executes at the midpoint, or in auctions, or in other mechanisms that may not be directly impacted by the worsened spread. But as seen below, even if NYSE’s assumptions are 20% too aggressive, the cost to investors would still be significant.



IEX also claims that the fact that certain exchanges do not offer rebates indicates that rebates are not necessary to promote the display of liquidity. But non-rebate exchanges illustrate the opposite point. As noted above, EDGA spreads are wider than EDGX spreads, and the only difference between those two markets is that EDGA does not offer rebates.

What is driving IEX? Perhaps, because it does not list any securities, it doesn’t yet recognize that a primary function of a listing exchange is disseminating a robust public quote. Or perhaps it doesn’t care about the quality of the publicly displayed quote

²² See IEX Letter.

²³ See NYSE TAQ.

²⁴ See <https://iextrading.com/stats/#historical-stats>.

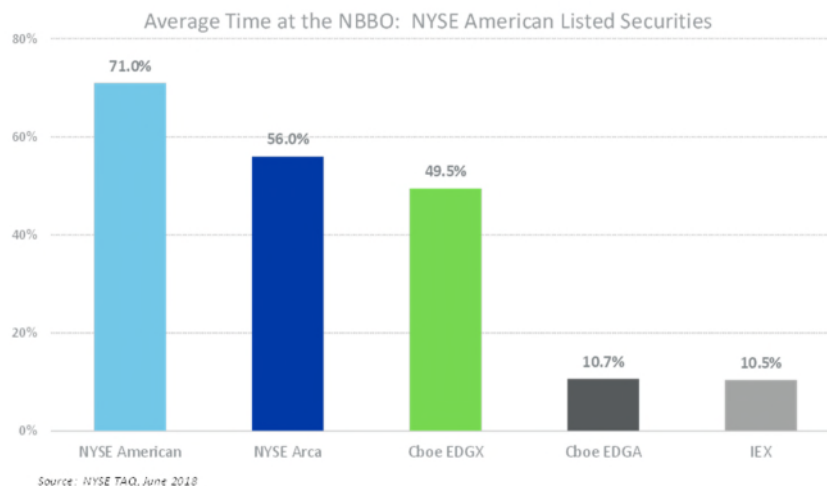
because it is, principally, a dark venue. If the Proposal causes the quoted spreads on other markets to worsen, IEX, by comparison, can only look better.

IEX next turns to fiction, claiming that NYSE believes that liquidity is posted only by electronic market makers. NYSE Group never took that position. In fact, rebates on NYSE and NYSE Arca are available to any liquidity provider.

Some commenters have suggested that the buy-side will replace market makers in setting the quoted market if rebates are reduced or eliminated. We are skeptical that this substitution effect will be significant. Most institutional investors do not want to set a new displayed price level for fear of information leakage (which is why their orders are broken down for execution in the first place). Further, it is not realistic for the buy-side to be continuously active on both sides of the market across all stocks impacted by the Transaction Fee Pilot.

More generally, IEX argues that NYSE assumes spreads will uniformly increase. They appear to misunderstand the model. Because we cannot predict which securities will be included in each bucket in the pilot, we calculated an *average* rebate reduction based on the scale of the access fee change in the first two buckets, the prohibition on rebates in the third bucket and keeping rebates unchanged for the remaining control group securities. This calculation results in an average rebate reduction of about \$0.00082/per share across *all* securities. Depending on which stocks are ultimately in each bucket, the average impact will be higher or lower, but our methodology for the estimate is appropriate.

IEX also asserts that spreads for less-liquid securities are not sensitive to rebate levels. This is untrue. For example, as set forth in the chart below, consider the relative spreads on maker-taker venues versus non-rebate exchanges for NYSE American-listed securities, which are generally less-liquid securities.²⁵



²⁵ NYSE American generally does not pay rebates. However, for NYSE American-listed companies, NYSE American provides incentives to the Designated Market Maker to meet quoting obligations.

Finally, IEX repeatedly asserts that rebates cause investors to race to enter orders. This ignores an obvious fact: the incentive for orders to arrive early is created by an exchange's "price-time priority" allocation model, not the exchange's fees or rebates. So long as an exchange fills similarly priced resting orders on a first-come, first-served basis (the allocation model use by all US equity exchanges except for NYSE and NASDAQ PSX), there will be an incentive for traders to enter their orders before other participants. This is completely independent of rebate concerns and exists on any venue using a price-time priority allocation model, *including IEX*.

6. The Proposal Will Result in Unfair Competition

IEX has been unsuccessful in part because they are wrong about rebates, market data, and colocation. Because they have painted themselves into a corner, they now advocate for regulatory changes, such as the Proposal, that will degrade the displayed public quote on other exchanges and diminish its relative inferiority.

IEX's claim that the Transaction Fee Pilot will not advantage off-exchange venues is similarly disingenuous. It doesn't take a rocket scientist to see that introducing pricing controls and new burdens for one class of competitor but not another provides an advantage to the latter.

Instead, IEX parrots the flawed argument that prohibitively high take fees on exchanges are the driver for order flow to route off-exchange. If high access fees were the reason that market participants choose to trade on off-exchange venues, then low-cost, flat-fee exchanges, such as NYSE American and EDGA would have more significant trading volumes. But they do not.

7. NYSE Believes that Broker Conflicts Should be Studied, not Exchange Fees

From the outset, NYSE Group has never accepted the premise that exchange rebates are driving widespread inappropriate routing by brokers. IEX calls exchange rebates the source of "greatest controversy." Although debate has been fueled by IEX's consistently false narrative, the facts say otherwise. Approximately 40% of equities transactions take place on off-exchange venues, which strongly suggests that exchange rebates are not a driving factor with respect to where brokers execute trades. Indeed, order flow generally doesn't even get routed to an exchange until brokers first exhaust non-exchange options, including internalizing the order flow. The entire life cycle of an investor's order is what should be studied, and the design of the Proposal cannot accomplish that goal.

As we explained in our first comment letter, NYSE Group believes that if the issue to be studied is broker-dealer conflicts, the Commission has a host of other tools to study this issue without imposing the cost of the Proposal or undermining competition across different trading venues (including the very real possibility of causing even more orders to route to less-regulated, unlit venues).²⁶ These alternatives include collecting order routing information directly from broker-dealers and completing outstanding Commission rule-making on enhanced disclosures. By requiring more detailed disclosures, the

²⁶ See NYSE Letter.

Commission could effectively study potential broker-dealer conflicts across *all* venues where trades are executed. Unlike the Proposal, such a comprehensive review would provide the Commission with the type of data necessary to assess whether and how to conduct rulemaking.²⁷ Unfortunately, the Proposal would only permit the Commission to study the impact on broker-dealer routing of government-mandated changes to exchange fees, which will not provide meaningful data when broker-dealers can choose among exchange and off-exchange venues.

As a number of other commenters have pointed out, we have yet to see any illustration of how the proposed data from the Transaction Fee Pilot is going to provide any actionable insight into whether broker-dealer conflicts exist, increase, or decline as a result of the Proposal's experimentation.²⁸

IEX takes the untenable position that even with disclosures, investors would not be in a position to know whether or how much fee conflicts may have impacted routing of their orders. This runs contrary to how institutional investors already demand detailed trade cost analyses ("TCA") from their brokers and that brokers already readily provide data and analysis to such customers. Institutional investors employ numerous considerations in determining which broker to use and readily have the ability to find a broker that satisfies any demands for transparency in routing decisions.

Potentially IEX makes this nonsensical claim so that it can promote its forthcoming commercial TCA offering. We look forward to the rule filings IEX will submit to introduce this service as a facility of the exchange.

Conclusion

NYSE Group supports the Commission's efforts to evaluate the potential conflicts that arise between broker-dealers and their customers. We welcome constructive dialogue. In our original letter and blog post, we have sought to identify the harms associated with the Proposal and why its costs outweigh its benefits.

Instead of engaging in a constructive public dialogue or presenting alternative data or analyses, IEX used the public comment process to disparage NYSE, misrepresent our position, and falsely accuse us of misleading listed companies. In IEX's world, there is always someone else to blame for its inadequacy.

²⁷ Several commenters agree that the Commission should focus on more detailed disclosures from broker-dealers. See Citadel Letter; Virtu Letter; and STANY Letter. See also Letter from Marc R. Bryant, Deputy General Counsel, Fidelity Investments, to Mr. Brent J. Fields, Secretary, Commission, dated May 25, 2018 ("Fidelity Letter").

²⁸ See, e.g., TD Ameritrade Letter; STANY Letter; Morgan Stanley Letter; SSGA Letter; Citadel Letter; Fidelity Letter; and Virtu Letter.

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In the real world, the IEX model has failed. It trades mostly in the dark, has no listings, and has not achieved its promised growth. If there were truth to the IEX narrative, or if its model created significant value, it would have been more successful. Blaming competitors whose business models work and lodging false accusations do not change objective facts.

Respectfully submitted,



Elizabeth K. King

cc: Honorable Jay Clayton, Chairman
Honorable Kara M. Stein, Commissioner
Honorable Robert J. Jackson, Jr., Commissioner
Honorable Hester M. Peirce, Commissioner
Brett Redfearn, Director, Division of Trading and Markets

Appendix of Companies Opposed to the Proposal (as of July 10, 2018)

Acco Brands, Inc.
Apache Corporation
Bank of Hawaii Corporation
Cott Corporation
Ennis, Inc.
Era Group Inc.
Ethan Allen Interiors, Inc.
First Majestic Silver Corp.
Genesis Healthcare, Inc.
Halliburton
The Home Depot
Johnson Controls International plc
Knight-Swift Transportation Holdings Inc.
Leaf Group Ltd.
Level Brands, Inc.
Mastercard, Inc.
McDermott
Mexco Energy Corporation
Natural Grocers by Vitamin Cottage, Inc.
Newpark Resources, Inc.
NorthWestern Corporation
The Proctor & Gamble Company
Sensient Technologies Corporation
SIFCO Industries, Inc.
Standard Motor Products, Inc.
Tredegar Corporation
Trex Company
Unitil Corporation
Weingarten Realty