

## Public Statement

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# Statement at Open Meeting on Transaction Fee Pilot Proposal



**Commissioner Hester M. Peirce**

**March 14, 2018**

I support today's recommendation to propose a transaction fee pilot. Congratulations to Brett on your first open meeting. I am very much looking forward to collaborating with you on the many other issues on the Division's docket. You bring a wealth of experience and insight to the Commission.

I would like to thank the staff for working closely with my office to answer my questions about the proposal. I am happy to see the staff building a recommendation on the work of the Equity Market Structure Advisory Committee.

I look forward to hearing commenters' views on whether the proposed Pilot would be effective in helping the Commission and academic researchers better understand how order routing behavior and market quality may be affected by lower caps on transaction fees and by a prohibition on rebates.

Although I do support the recommendation, I must admit to finding myself somewhat puzzled by the position in which we as a Commission find ourselves. Since Congress directed us in 1975 to use our authority "to facilitate the establishment of a national market system for securities,"<sup>[1]</sup> we have gone on to establish, maintain, and direct the securities markets with a complex set of prescriptive mandates. I find considerable irony in the fact that the markets that long symbolized the dynamic and energetic character of American capitalism are now subject to an exceedingly comprehensive regulatory framework that hearkens back in some ways to discredited regulatory approaches of the past.

Our interventionist role in these complex markets has created a correspondingly complex set of incentives that give rise to a wide range of conduct that may be of little or questionable benefit to investors and issuers. Thus, it is perhaps unsurprising that we find ourselves here today considering a pilot to identify whether broker-dealers, following incentives created by exchanges, which in turn are responding to incentives created by our rules, are making order routing decisions that benefit broker-dealers at the expense of their best execution obligations to their customers. And so it is that, forty years after Congress's call to "facilitate" a national market system, we find ourselves micromanaging prices that exchanges can charge their broker-dealers to execute transactions in national market system securities.

This approach to regulating our markets deserves a healthy degree of skepticism. The effects of our approach—on financial innovation, on capital formation, on the maintenance of fair, efficient, and orderly markets, and particularly on investor protection—also deserve intense scrutiny. Today's Pilot should be only the first step in a deeper inquiry into the role our rules play in distorting incentives in our markets.

With these concerns in mind, I ask market participants—including institutional and retail investors, broker-dealers and exchanges—to comment not only on the design of this proposed Pilot but also on possible alternative approaches that, either together with the Pilot or independently, could help us identify where our rules distort market participants' incentives.

We have heard that some market participants are experiencing “pilot fatigue.” I am interested in hearing commenters’ views about whether the proposed Pilot represents an effective use of the Commission’s and market participants’ resources. I anticipate that the Pilot will produce useful data, but we must do our best to understand at what cost those data will be produced. Commenters’ input is essential.

I am interested in hearing not only about direct costs, but about how the Pilot would alter market participants’ behavior and the costs uniquely attributable to the use of a rulemaking to conduct a Pilot. We know all too well that there are costs of using an NMS plan to conduct a Pilot. That said, the proposed Pilot would be effected through a temporary Commission rule that imposes compliance burdens. These burdens are heightened by the costs of responding to Commission examinations and the risks of enforcement actions for technical violations of these rules. I am concerned that the Commission routinely underestimates such costs because we do not take into account regulated entities’ fears that foot-faults may expose them to potentially significant legal risk. Although I expect both OCIE and Enforcement to exercise a reasonable degree of discretion in their examination of firms and enforcement of technical rules of this nature—especially when the rules are temporary, as this one would be—a regulated firm’s compliance department may—entirely reasonably—not share this expectation.

Again, my thanks to the staff for their hard work on this release. I am happy to support it and have no questions.

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[1] Exchange Act Section 11A(a)(2).