

MEMO# 32537

June 18, 2020

SEC Denies Nasdaq's Motion to Stay NMS Governance Final Order

[32537]

June 18, 2020 TO: Equity Markets Advisory Committee RE: SEC Denies Nasdaq's Motion to Stay NMS Governance Final Order

On June 12, the SEC issued an order denying Nasdaq's motion to stay the final order to reform National Market System (NMS) governance pending resolution of its petition for review with the U.S. Court of Appeals for the DC Circuit.[\[1\]](#)

The SEC determined that (i) the stay request overstated the harm that would result from complying with the final order, which requires the exchanges to file a proposed consolidated NMS Equity Data Plan; (ii) Nasdaq has not shown that its legal challenge, *i.e.*, that the final order is inconsistent with the Exchange Act, is likely to succeed;[\[2\]](#) and (iii) the final order serves a strong public interest.

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endnotes

[\[1\]](#) Order Denying Stay (June 12, 2020), *available at* <https://www.sec.gov/rules/sro/nms/2020/34-89066.pdf>. We previously notified you about Nasdaq's petition for review and the motion to stay the order. See ICI Memorandum No. 32513 (June 5, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32513.

[\[2\]](#) In its stay motion, Nasdaq argued that its petition for review with the D.C. Circuit is likely to succeed because (i) the final order is inconsistent with the Exchange Act, which specifies that SROs are responsible for jointly implementing the NMS, not non-SRO entities; (ii) and the mandatory governance structure divests SROs of their ability to "act jointly" in operating a new consolidated equity data plan. The SEC, however, noted that it had already rejected these arguments in adopting the final order.

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