

**MEMO# 33111**

February 17, 2021

# Major Exchange Groups Petition DC Circuit Court of Appeals to Review SEC's Market Data Infrastructure Rule

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February 17, 2021 TO: Equity Markets Advisory Committee RE: Major Exchange Groups Petition DC Circuit Court of Appeals to Review SEC's Market Data Infrastructure Rule

On February 5, the three major exchange groups—NYSE, Nasdaq, and Cboe—filed respective petitions with the US Court of Appeals for the DC Circuit requesting a review of the SEC’s Market Data Infrastructure Rule.[\[1\]](#) The final rule, which the SEC unanimously adopted on December 9, 2020, expands the national market system (“NMS”) market data content and replaces the exclusive securities information processors (“SIPs”) with competing consolidators. The exchanges have requested that the court vacate the rule on the basis that it is unlawful and does not promote efficiency, competition, and capital formation.

The exchanges also submitted to the SEC a joint motion[\[2\]](#) to stay the Market Data Infrastructure Rule pending (i) the SEC’s approval of the proposed CT plan, which they submitted pursuant to the SEC’s NMS Governance Order;[\[3\]](#) and (ii) the resolution of their legal challenges to the NMS Governance Order before the DC Circuit.[\[4\]](#) The exchanges argue that a stay is warranted because the SEC’s ongoing review of the CT Plan and related litigation create “substantial uncertainty” about whether a new CT Plan Operating Committee would be implementing the rule, among other issues.

Pursuant to the DC Circuit’s order, the exchanges will be required to file supplemental documents to the petition for review by March 11.

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## endnotes

[\[1\]](#) Petition for Review, The Nasdaq Stock Market LLC, et. al v. SEC, No. 21-1050 (D.C. Cir.

Feb. 5, 2021); Petition for Review, Cboe BYX Exchange, Inc. et al v. SEC, No. 21-1051 (D.C. Cir. Feb. 5, 2021); Petition for Review, New York Stock Exchange LLC v. SEC (D.C. Cir. Feb. 5, 2021).

[2] Motion for Stay of Market Data Infrastructure Rule by the Nasdaq Stock Market LLC, et al., New York Stock Exchange LLC et al., and Cboe BYX Exchange, Inc., et al. (Feb. 5, 2021), available at <https://www.sec.gov/rules/final/2021/34-90610-motion-for-stay.pdf>.

[3] We submitted a comment letter last fall that recommends certain changes to the proposed CT Plan. See ICI Memorandum No. 32910 (Nov. 12, 2020), available at [https://www.ici.org/my\\_ici/memorandum/memo32910](https://www.ici.org/my_ici/memorandum/memo32910).

[4] The exchanges submitted a petition for review last summer that requests the DC Circuit to vacate the order. See ICI Memorandum No. 32513 (June 5, 2020), available at [https://www.ici.org/my\\_ici/memorandum/memo32513](https://www.ici.org/my_ici/memorandum/memo32513). We submitted an amicus brief to the DC Circuit last month in support of the order. See ICI Memorandum No. 33055 (Jan. 20, 2021), available at [https://www.ici.org/my\\_ici/memorandum/memo33055](https://www.ici.org/my_ici/memorandum/memo33055).

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