

MEMO# 29873

April 27, 2016

SEC Equity Market Structure Advisory Committee to Act on Recommendations for a Maker-Taker Pilot Program and Changes to NMS Plan Governance

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 15-16
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 10-16
ETF ADVISORY COMMITTEE No. 10-16
SEC RULES COMMITTEE No. 20-16 RE: SEC EQUITY MARKET STRUCTURE ADVISORY COMMITTEE TO ACT ON RECOMMENDATIONS FOR A MAKER-TAKER PILOT PROGRAM AND CHANGES TO NMS PLAN GOVERNANCE

The Securities and Exchange Commission's ("SEC") Equity Market Structure Advisory Committee ("EMSAC") discussed recommendations for a maker-taker pilot program and changes to the governance arrangements of national market system plans ("NMS Plans") at its meeting on April 26, 2016. ICI has urged the Commission to act on both of these issues in recent comment letters. [\[1\]](#) During the meeting, Stephen Luparello, Director of the SEC's Division of Trading and Markets, asked the EMSAC to vote on both recommendations in the near future. Once the EMSAC endorses a particular recommendation, the SEC would need to determine whether to proceed with a proposal to incorporate the recommendation into its regulations. This memo briefly explains both recommendations.

Maker-Taker Pilot Program

In response to member concerns about the maker-taker fee model [\[2\]](#) commonly employed in the U.S. equity markets, ICI has advocated for the SEC to implement a pilot program to study how access fees and liquidity rebates affect equity trading. The Regulation NMS subcommittee of the EMSAC had been considering reforms to the maker-taker fee model and its recommendation, discussed with the full EMSAC on April 26, calls for the SEC to create such a pilot. [\[3\]](#)

The subcommittee's recommendation calls for the SEC to create four pilot buckets to study the effects of reducing access fees for a random sample of stocks with a market capitalization exceeding \$3 billion. One of the pilot buckets would set the maximum access

fee at such a low level that the subcommittee believes any rebate offered by an exchange “should result in a de minimis economic incentive” for liquidity providers. [4] The pilot program would run for one or two years and would assess various market quality metrics, including: quoted spreads, effective spreads, displayed liquidity, volatility, and trading volume.

NMS Plan Governance

ICI has advocated for the SEC to ensure fair representation of market participants, including asset managers, on the operating committee of NMS Plans. Today, the self-regulatory organizations—the exchanges and the Financial Industry Regulatory Authority—control governance of NMS Plans. Other market participants have an informal role on the advisory committee of certain NMS Plans.

The EMSAC’s Trading Venues Regulation subcommittee recommended that changes should be implemented to the NMS Plan governance structure and the role of NMS Plan advisory committees should be expanded. [5] In particular, the subcommittee recommended clarifying the process for selecting advisory committee representatives, expanding and formalizing the role of the advisory committee, and narrowing the use of executive sessions in NMS Plan governance. Although these changes would fall short of ensuring buy-side representation on NMS Plan operating committees, they could result in improved governance practices for these important industry bodies.

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endnotes

[1] See letter from David Blass, General Counsel, ICI, to SEC Equity Market Structure Advisory Committee, dated January 20, 2016, available at https://www.ici.org/my_ici/memorandum/memo29652. See also letter from Paul Schott Stevens, President & CEO, ICI, to Mary Jo White, Chair, SEC, dated November 30, 2015, available at https://www.ici.org/my_ici/memorandum/memo29517.

[2] Trading venues that use the maker-taker fee model charge fees to participants that remove liquidity (i.e., “takers”) from their market while paying rebates to those participants that add liquidity (i.e., “makers”).

[3] Details of the subcommittee’s recommendation are available on the SEC’s website, <https://www.sec.gov/spotlight/emsac/emsac-regulation-nms-subcommittee-recommendation-041916.pdf>.

[4] The subcommittee considered whether to recommend the prohibition of liquidity rebates in this pilot bucket, but was not able to reach consensus on this topic. The last bucket with the lowest rebate cap appears to be a compromise reached by the subcommittee.

[5] The subcommittee also proposed three other recommendations: (1) evaluate and clarify exchange functions subject to immunity and increase rule-based exchange liability levels;

(2) if a rule change will require technology changes by the industry that will be prescribed through the publication of technical specifications, the SEC and the self-regulatory organizations should link the implementation date of those rule changes to publication of technical specifications; and (3) the SEC should work to formalize by rule the centralization of common regulatory functions across self-regulatory organizations into a single regulator. Further details of the subcommittee's recommendation are available on the SEC's website, <https://www.sec.gov/spotlight/emsac/emsac-trading-venues-subcommittee-recommendations-041916.pdf>.

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