

MEMO# 32453

May 11, 2020

SEC Issues Final Order to Reform NMS Equity Data Plan Governance

[32453]

May 11, 2020 TO: ICI Members SUBJECTS: Trading and Markets RE: SEC Issues Final Order to Reform NMS Equity Data Plan Governance

We are pleased to report that the SEC voted unanimously to issue a final order directing the SROs—the equity exchanges and FINRA—to submit a new Consolidated National Market System (NMS) Equity Data Plan (“Consolidated NMS Plan”) that consolidates the three existing Equity Data Plans and changes the governance structure.[\[1\]](#) ICI filed a comment letter expressing strong support for the Consolidated NMS Plan.[\[2\]](#) In addition, ICI called for governance reforms multiple times over the past several years, many of which are reflected in the final order.

The governance changes specified in the final order are intended to (i) mitigate the SROs’ conflicts of interest that have inhibited improvements to the content and delivery of the consolidated market data feeds; and (ii) improve the efficiency of NMS equity data plan governance. The SEC issued the final order largely as proposed. The order is summarized below.

- **Non-SRO Voting Representation:** The Consolidated NMS Plan’s operating committee must include voting representatives from entities unaffiliated with SROs, including, importantly, a representative from an institutional investor such as an asset manager.[\[3\]](#) The current members of the existing Equity Data Plans’ advisory committees will select the initial non-SRO members. Subsequent non-SRO members will be selected by then-serving non-SRO members.
- **Voting Power:** SROs will be limited to one vote per exchange group, with the ability to obtain a second vote if they maintain a consolidated equity market share of at least fifteen percent for at least four of the six calendar months preceding a vote of the operating committee. SRO representatives will maintain two-thirds of the voting power on the operating committee, i.e., aggregate number of votes, and non-SRO representatives will have one-third of the voting power.
- **Independent Administrator:** The Consolidated NMS Plan must have an independent administrator that does not sell competing proprietary market data products.

The final order also requires the Consolidated NMS Plan to include provisions to address conflicts of interest and to protect confidentiality and proprietary information.[\[4\]](#)

The SROs are required to file the Consolidated NMS Plan within 90 days of the publication of the final order in the Federal Register. The plan will be subject to public comment and SEC approval.

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endnotes

[1] Securities Exchange Act Release No. 88827 (May 6, 2020), *available at* <https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf>.

[2] ICI Memorandum No. 32253, ICI Comment Letter on SEC Proposed Order to Reform NMS Plan Governance (Feb. 28, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32253.

[3] The other non-SRO representatives will include an institutional investor broker-dealer; a retail representative; a retail broker-dealer; a securities market data vendor; and an issuer of NMS stock.

[4] In addition to the final order, the Commission also approved amendments to the existing Equity Data Plans that (i) make mandatory their current disclosure policies with respect to conflicts of interest and (ii) establishes a policy regarding the confidential treatment of any data or information that the operating committee generates, accesses, transmits, or discusses. The order requires SROs to incorporate those amendments into the future Consolidated NMS Plan.