

MEMO# 32163

January 21, 2020

SEC Proposes Order Directing SROs to Submit a New NMS Plan Regarding Consolidated Equity Market Data

[32163]

January 21, 2020 TO: Equity Markets Advisory Committee RE: SEC Proposes Order Directing SROs to Submit a New NMS Plan Regarding Consolidated Equity Market Data

The SEC recently proposed an order to modernize the operation of existing national market system plans (the “NMS Plans”) that govern the public dissemination of real-time, consolidated equity market data for national market system stocks (“NMS Stocks”).[\[1\]](#) The Notice states that the Commission’s preliminary view is that market developments have heightened conflicts of interest between the exchanges’ commercial interests and their regulatory obligations under the NMS Plans to produce and provide fair and efficient consolidated market data. The Commission further states that the operation of the current NMS Plans has not kept pace with the efforts of the exchanges to expand the content of, and employ technology, to improve certain proprietary data products. Comments on the proposed order are due to the SEC no later than February 28, 2020. The proposed order is described in more detail below.

The proposed order would require market participants to submit a single, new equity data plan (the “New Consolidated Data Plan”) in which all of the exchanges and FINRA (“SROs”) would participate. The New Consolidated Data Plan would address conflicts of interests between the exchanges’ commercial interests and their regulatory obligations to produce and provide consolidated market data. It also would consolidate the existing NMS Plans to improve efficiency and transparency of the dissemination process.[\[2\]](#)

The proposed order states the Commission’s belief that the current governance structure of the NMS Plans no longer provides for the “prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations and transactions in such securities, and the fairness and usefulness of the form and content of such information.”

To improve the governance structure of the new NMS Plan’s operating committee and mission, the Commission’s proposed order would:

- include entities other than SROs, comprised of representatives from an institutional investor such as an asset manager, a broker-dealer focused on retail investors, a

broker-dealer focused on institutional investors, a securities market data vendor, an issuer and a retail investor (“Non-SROs”) on the operating committee;

- grant one-third of the operating committee’s voting power^[3] to the newly appointed non-SROs;^[4]
- grant the remaining two-thirds of the voting power to the SROs; and
- change the operating committees’ current unanimous/simple majority voting system to an augmented majority voting system.^[5]

The SEC proposes imposing a direct responsibility on the operating committee to monitor changes in the marketplace regarding demands for, and pricing of, equity market data and to ensure that Securities Information Processor, or SIP, data meets those demands and are widely distributed at fair and reasonable prices.

The SEC further proposes that the operating committee, among other matters, would select and oversee an independent plan administrator, plan processors, an auditor, and other professional service providers subject to certain conditions. Furthermore, the operating committee would develop and maintain fair, reasonable, and consistent processes, terms, and fees for the distribution, transmission, and aggregation of core data.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

^[1] See Notice of Proposed Order Directing the Exchanges and the FINRA to Submit a New NMS Plan Regarding Consolidated Equity Market Data, (January 8, 2020) (hereinafter referred to as Notice or Proposed Order), *available at* <https://www.sec.gov/rules/sro/nms/2020/34-87906.pdf>.

^[2] There are currently three NMS plans with identical operating committees and the same advisory committee members. The three plans also have overlapping administrative and regulatory functions and share the same revenue distribution formula, legal representation, and other professional services.

^[3] Further, an unaffiliated SRO and exchange group each would have one vote on the operating committee, with a second vote provided if the exchange group or unaffiliated SRO has a market center(s) which trade more than 15% of consolidated equity market share. Non-SRO Members will receive an aggregate number of votes equal to one-half of the aggregate number of SRO member votes, with a fractional share being allocated to each individual Non-SRO Member.

^[4] A majority vote of the current members of the NMS Plans’ advisory committee (other than any SRO representative) would select the Non-SRO Members.

^[5] The augmented majority voting system would stipulate that all new operating committee actions require both a two-thirds majority of all votes and a majority of the SRO votes.

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