

MEMO# 32253

February 28, 2020

ICI Comment Letter on SEC Proposed Order to Reform NMS Plan Governance

[32253]

February 28, 2020 TO: ICI Members SUBJECTS: Trading and Markets RE: ICI Comment Letter on SEC Proposed Order to Reform NMS Plan Governance

The Commission published for comment a proposed 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.[\[1\]](#) The ICI filed a comment letter on the Proposed Order with the Commission today. The letter expresses strong support for the Proposed Order, noting that we long have supported reforming the NMS plans’ governance system.

The letter is attached and summarized below.

Non-SRO Voting Representation

The letter strongly supports:

- requiring the New NMS Plan to include voting representatives from entities unaffiliated with SROs on the new NMS Plan’s operating committee— including a representative from an institutional investor such as an asset manager; and
- amending the voting structure of the New NMS Plan to allocate one-third of the voting power to these new operating committee representatives.

It also states that we would not object to a provision in the New NMS Plan explicitly providing that non-SRO voting representatives have a duty to act in good faith and in the public interest. This is intended to respond to concerns that the NYSE already has expressed to the Commission about the new NMS Plan including non-SRO voting representatives.

Exchange Act Voting Power

The letter supports the Commission reducing the voting power of exchange groups to a single vote, with the ability to obtain a second vote if they maintain 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.

Independent Administrator

The Proposed Order would require a SIP to have an independent administrator that does not

sell competing market data products. The letter expresses strong support for this aspect of the Proposed Order, noting that it is an essential requirement. The letter also states that we would not object to FINRA being the administrator. It explains that in reaching this position, we recognized that FINRA would not face the same conflicts of interest as exchanges because it does not sell proprietary equity market data. We also accounted for the fact that FINRA is a logical choice, given that it recently assumed responsibility for administering the Consolidated Audit Trail, or CAT. We further pointed out that some members were reticent for us to support FINRA as the administrator, instead preferring greater diversity among the range of entities performing the critical market functions associated with administering NMS plans. We urge the Commission to encourage FINRA to engage in dialogue with the investment company industry regarding its administration of the New NMS Plan if it permits FINRA to be the administrator.

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[Attachment](#)

endnotes

[1] See [Securities Exchange Act Release No. 87906](#), 85 FR 2164 (Jan. 14, 2020).

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