

MEMO# 33978

January 5, 2022

ICI Files Amicus Brief Supporting the SEC-Approved Reforms to NMS Equity Data Plan Governance

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TO: ICI Members

Equity Markets Advisory Committee SUBJECTS: Litigation & Enforcement

Trading and Markets RE: ICI Files Amicus Brief Supporting the SEC-Approved Reforms to NMS Equity Data Plan Governance

On Monday, the Investment Company Institute (ICI) filed the attached amicus curiae ("friend of the court") brief to the DC Circuit Court of Appeals in support of the SEC in *The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission*. The case concerns the SEC's approval last August of the CT Plan,[\[1\]](#) which implements its May 2020 order to reform governance of consolidated equity market data.[\[2\]](#) The three major stock exchange groups (Nasdaq, NYSE, and Cboe) have petitioned the DC Circuit to overturn the plan. The exchange groups had also sought to vacate the May 2020 order in an earlier DC Circuit case that was ultimately dismissed on technical grounds.[\[3\]](#) In that prior case, ICI submitted an amicus brief in support of the SEC as well.[\[4\]](#)

ICI's brief in this case updates the earlier brief with additional details to further support its arguments for equity data governance reform. Specifically, the latest brief notes that the exchange groups recently filed proposed fees to implement the SEC's market data infrastructure rule without the support of the independent SROs or FINRA, as well as over the objections of the advisory committees.[\[5\]](#) Thus, ICI argues that the governance reforms of the CT Plan are necessary to avoid such situations.[\[6\]](#)

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endnotes

[1] Securities and Exchange Act Release No. 34-92586 (Aug. 6, 2021) ("Approval Order" or "Final CT Plan"), available at <https://www.sec.gov/rules/sro/nms/2021/34-92586.pdf>.

[2] The May 2020 final order directs 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 plans and requires non-SRO voting representation on the new plan's operating committee. See Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market Data System Plan Regarding Consolidated Equity Market Data (May 6, 2020), available at <https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf>.

[3] The DC Circuit had dismissed the earlier suit to overturn the May 2020 order because it was deemed to not be a "final order" based on the pending approval of the CT Plan.

[4] ICI Memorandum No. 33055 (Jan. 20, 2021), available at <https://www.ici.org/memo33055>.

[5] CTA/CQ/UTP Plan Fee Amendments, 86 Fed. Reg. 67517 (Nov. 19, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-11-26/pdf/2021-25752.pdf>.

[6] ICI Brief at 23.