

MEMO# 34159

May 25, 2022

DC Circuit Upholds SEC's Market Data Infrastructure Rule

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TO: Equity Markets Advisory Committee RE: DC Circuit Upholds SEC's Market Data Infrastructure Rule

On May 24, the US Court of Appeals for the DC Circuit upheld the SEC's Market Data Infrastructure Rule. The final rule, which the SEC unanimously adopted in December 2020, expands the national market system ("NMS") market data content and replaces the exclusive securities information processors ("SIPs") with competing consolidators. ICI previously submitted a comment letter in support of the rule. The major exchange groups had petitioned the DC Circuit court vacate the rule on the basis that it is unlawful and does not promote efficiency, competition, and capital formation.

The Court, however, denied those petitions and found that the SEC's rule reasonably balanced the Exchange Act's objective of promoting the "prompt, accurate, reliable, and fair collection, processing, distribution, and publication" of equity market data with the exchanges' concerns about the loss of transparency, competition, and their own revenue (i.e., loss of competitive standing vis a vis off-exchange trading venues and loss of market data revenue). Among other conclusions, the court held that the SEC reasonably concluded that

- the additions of new core data and introduction of competing consolidators would reduce information asymmetries between SIP feed users and users of proprietary data feeds;
- the rule would not adversely affect the availability of a single, reliable NBBO beyond the fragmentation already exists under the current market data infrastructure, given that many market participants already calculate their own NBBO; and
- the rule may erode the competitive position of the major exchange groups (which the court found to be speculative), but would still overall enhance competition with respect to equity market data distribution.

Nhan Nguyen
Assistant General Counsel, Securities Regulation

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