

**MEMO# 35607**

January 31, 2024

# SEC Issues Revised NMS Consolidated Equity Data Plan for Public Comment

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TO: Equity Markets Advisory Committee RE: SEC Issues Revised NMS Consolidated Equity Data Plan for Public Comment

On January 19, the SEC published a revised SRO proposal for a new Consolidated National Market System (NMS) Equity Data Plan ("Revised CT Plan") for public comment.<sup>[1]</sup> This proposal is based on the SEC's September 2023 amended order for NMS equity data governance,<sup>[2]</sup> which conforms to the July 2022 court decision from the DC Circuit Court of Appeals. That court decision invalidated the original CT Plan that the SEC had approved in 2021, specifically the provisions for non-SRO voting representation on the plan's Operating Committee.<sup>[3]</sup> Comments to this revised proposal are due by February 26, 2024.

The Revised CT Plan would consolidate the three existing equity data plans and keep the following required provisions from the original CT plan, which the court upheld:

- **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.
- **Independent Administrator:** The revised plan will have an independent plan administrator that does not sell competing proprietary market data products.

The revised plan focuses primarily on the selection of a new independent administrator and would enable the CT Plan Operating Committee to continue working with the incumbent SIP processors, i.e., the Consolidated Tape Association (CTA) and the Unlisted Trading Privileges (UTP), to process and disseminate consolidated equity market data. We highlight notable provisions of the revised plan below.

## Advisory Committee

The Revised CT Plan would provide for an Advisory Committee that consists of the following different participant types:

- **Non-SRO Representatives:** the Operating Committee would select, by simple majority, at least one representative for each of the following non-SRO categories: (1) an

institutional investor; (2) a broker-dealer with a predominantly retail investor customer base; (3) a broker-dealer with a predominantly institutional investor customer base; (4) an unaffiliated[4] securities market data vendor; (5) an unaffiliated issuer of NMS stock; and (6) a retail representative.[5]

- CT Plan Member-Chosen Representatives: Each CT Plan Member would have the right to choose one member of the Advisory Committee that is not employed by or affiliated with any CT Plan Member or its affiliates or facilities.

Advisory Committee members would be selected for two-year terms and have the right to submit their views to the Operating Committee on a matter prior to an Operating Committee decision.

## **Operating Committee and Subcommittees**

Similar to the initial plan, the CT Plan's Operating Committee would have "full and complete" discretion to manage and control the CT Plan.[6] Nearly all actions of the committee would require at least a two-thirds affirmative vote of SRO/SRO group voting representatives, with certain exceptions, including for (1) selecting Advisory Committee members; (2) the decision to enter an Executive Session;[7] and (3) the decision to discuss a matter in a legal subcommittee[8]. The Operating Committee would also be able to create subcommittees and determine the scope of their activities.[9] Minutes of all subcommittee meetings would be required to be prepared and accessible to the Operating Committee and Advisory Committee members, except for meetings in a legal subcommittee.[10]

Advisory Committee members would be able to attend Operating Committee and subcommittee meetings, subject to an exception for (1) Executive Sessions;[11] and (2) legal subcommittee meetings concerning legal matters that exclusively affect CT Plan Members.[12]

## **Implementation Timeline**

The Revised CT Plan includes an implementation timeline that describes the relevant actions or steps and their dates of completion. The SROs have identified six workstreams for implementing the revised plan: (1) setting up plan governance; (2) developing the plan's fees, policies, and data subscriber agreements; (3) selecting the new plan administrator; (4) contract negotiations with the new administrator; (5) administrator setup; and (6) retirement of the three existing NMS equity data plans.[13] The SROs estimate that these workstreams, some of which can be carried out concurrently at certain points, will be completed within 30 months. Consistent with the SEC's amended order, the SROs will submit written progress reports to the SEC every three months after the Operating Committee is established that will be publicly available after the plan administrator is selected.[14]

Nhan Nguyen  
Assistant General Counsel, Securities Regulation

### **Notes**

[1] Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 34-99403 (Jan. 19, 2024), 89 Fed. Reg. 5002 (Jan. 25, 2024) ("Revised CT Plan Proposal"), available at

<https://www.govinfo.gov/content/pkg/FR-2024-01-25/pdf/2024-01369.pdf>.

[2] Amended Order Directing the Exchanges and the Financial Regulatory Authority, Inc. to File a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 98271 (Sept. 1, 2023), 88 Fed. Reg. 61630 (Sept. 7, 2023) ("SEC Amended Governance Order"), available at

<https://www.govinfo.gov/content/pkg/FR-2023-09-07/pdf/2023-19214.pdf>.

[3] ICI Memo No. 34215 (July 11, 2022), available at <https://www.ici.org/memo34215>.

[4] "Unaffiliated" means not affiliated or associated with a CT Plan Member (i.e., SRO), broker-dealer, or investment adviser with third-party clients. See Section 4.8(b)(i) of CT Plan LLC Agreement.

[5] The SEC included this requirement because non-SRO representatives are no longer being required to be included as voting members of the Operating Committee. SEC Amended Governance Order at 61632.

[6] Section 4.1 of CT Plan LLC Agreement.

[7] The decision to enter an Execution Session to discuss "other discrete matters" would be subject to a two-thirds majority vote. Id. at Section 4.3(c)(ii).

[8] Id. at Section 4.3(c).

[9] The revised plan specifies, however, that the Operating Committee cannot delegate to a subcommittee the administrative functions that are to be performed by the plan administrator. Id. at Section 4.8(a).

[10] Id. at Section 4.8(b).

[11] An Executive Session may be invoked to discuss certain matters for which the Operating Committee has determined that the Advisory Committee should not be included. Matters that can be discussed in an Executive Session include (1) any topic that requires discussion of "Highly Confidential Information" (as defined in the agreement); (2) vendor or subscriber audit findings; litigation matters; responses to regulators with respect to inquiries, examinations, or findings; and other discrete matters. Id. at Section 4.4(g)(i).

[12] These matters would consist of (1) litigation matters or responses to regulators with respect to inquiries, examinations, or findings; and (2) other discrete legal matters approved by the Operating Committee. These meetings would be open only to the voting representatives of the SRO (or SRO group), Member Observers, and other persons deemed appropriate based on a majority vote of the voting representatives. Minutes of this subcommittee would need to be prepared, but would be made available only to voting representatives, Member Observers, and others deemed appropriate by a majority of the Operating Committee. Id. at Section 4.8(d).

[13] Revised CT Plan Proposal at 5003.

[14] Id. at 5027.

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