

MEMO# 35957

December 16, 2024

SEC Issues Stay for Certain Regulation NMS Amendments

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TO: ICI Members

Equity Markets Advisory Committee

ETF (Exchange-Traded Funds) Committee

SEC Rules Committee

Security Valuation Operations Committee SUBJECTS: Trading and Markets RE: SEC Issues Stay for Certain Regulation NMS Amendments

On December 12, 2024, the Securities and Exchange Commission (SEC) issued an order granting a partial stay^[1] to Rules 610 and 612 of the recently adopted Regulation NMS amendments.^[2] The stay was issued in response to a motion^[3] submitted by The Nasdaq Stock Market LLC and Cboe Global Markets, Inc. and their respective exchange groups (together, the "Exchanges") in connection with the ongoing litigation for judicial review petitioned for by the Exchanges. ICI had previously submitted a letter to the SEC on December 10, 2024, in support of the request for a stay.^[4]

The SEC determined to exercise its discretion to stay the Regulation NMS amendments to Rules 600(b)(89)(i)(F) (including in the definition of regulatory data an indicator of the applicable minimum pricing increment required under Rule 612), 610(c) (reducing the access fee caps for protected quotations), and 612 (reducing the minimum pricing increment for quotations and orders for certain NMS stocks) pending the completion of judicial review of the Exchanges' petitions. The SEC did not stay the effective date for the amendments to Rule 610(d) (requiring that all exchanges fees charged and rebates paid for execution of an order of NMS stock be determinable at the time of execution). The SEC did not believe that the Exchanges had made any substantive arguments concerning the validity of the amendments to Rule 610(d) nor explained why a stay of those amendments was warranted. Further, the stay did not affect the compliance dates of Rule 603(b) and the definitions of odd-lot information and round lot in Rule 600(b), nor any other SEC rules or guidance, as those were not at issue in the litigation.

Kevin Ercoline
Assistant General Counsel

Notes

[1] Order Granting Partial Stay, Exchange Act Release No. 101899 (Dec. 12, 2024), available at <https://www.sec.gov/files/rules/other/2024/34-101899.pdf>.

[2] Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Exchange Act Release No. 101070, 89 Fed. Red. 81620 (Oct. 8, 2024).

[3] While the motion for stay was submitted directly to the SEC, the litigation was filed in the D.C. Circuit. See *Cboe Global Markets, Inc., et al v. SEC*, Case No. 24-1350 (D.C. Circuit).

[4] Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Vanessa Countryman, Secretary, SEC (Dec.10, 2024), available at <https://www.ici.org/system/files/2024-12/24-cl-stay-reg-nms-adoption.pdf>.

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