

## Press Release

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# SEC Proposes Improvements to Governance of Market Data Plans

### FOR IMMEDIATE RELEASE

2020-5

*Washington D.C., Jan. 8, 2020* — The Securities and Exchange Commission is seeking public comment on a proposed order to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and disseminate trade and quote data from trading venues.

“Today’s action is an important step in our ongoing efforts to modernize our national market system,” said SEC Chairman Jay Clayton. “The Commission has received extensive public input on issues relating to equity market structure and access to market data, as well as suggestions for how that structure should be updated to ensure that our markets continue to best serve the interests of investors. Today’s proposed order is designed to address issues regarding the dissemination of market data that affect the efficiency and fairness of our markets. In particular, we welcome public input on the specific proposed governance provisions.”

The proposed order would direct the equities exchanges and FINRA to file with the Commission a new NMS plan designed to increase transparency and address conflicts of interest and other issues presented by the current governance structure of the existing NMS plans. The proposed order describes the specific proposed governance provisions that the Commission preliminarily believes would address these issues. If the Commission decides to issue an order after considering public input, the NMS plan participants would be required to submit a new plan, which would then be published for public comment before the Commission takes any definitive action on a new plan. Until the Commission takes such action, the current plans will continue to govern.

Millions of Main Street investors, whether individually or collectively through mutual funds or pension funds, have invested their savings in equity securities. The consolidated market data produced pursuant to the current NMS plans is a critical component of the national market system through which these investments are priced and traded. Market developments have given rise to concerns about whether—as currently structured—the existing plans for equity market data continue to fulfill appropriately their statutory purpose. The proposed order states that the current governance structure of these plans perpetuates disincentives to enhance consolidated equity market data feeds, which are often slower and contain less information than the proprietary market data feeds offered by the participants that control much of the voting power for the NMS plans.

The Commission is also publishing for public comment notices of proposed amendments to the existing plans filed by the plan participants. The proposed amendments are designed to address conflicts of interest and the protection of confidential information. The Commission seeks comment on the proposed amendments and whether they adequately address those issues, and the Commission encourages commenters to refer to the specific requests for comment that the Commission has included in the notice for each plan amendment.

In order to facilitate a comprehensive discussion of these issues, the public may provide comments on how the proposed order and the proposed amendments would individually or collectively address the

issues identified by the Commission.

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## **FACT SHEET**

### **Governance of NMS Plans**

#### *Statutory Authority*

In 1975, Congress, through the enactment of Section 11A of the Securities Exchange Act, directed the Commission to facilitate the establishment of a national market system for the trading of securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Act. Among the findings and objectives of Section 11A(a)(1) are that new data processing and communications techniques create the opportunity for more efficient and effective market operations, and that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to ensure the availability of information with respect to quotations for and transactions in securities. In 2005, the Commission adopted Regulation NMS. Rule 608 of Regulation NMS authorizes two or more SROs, acting jointly, to file with the Commission a national market system plan (“NMS plan”) or a proposed amendment to an effective NMS plan. And Rule 603 of Regulation NMS requires the SROs to act jointly pursuant to NMS plans to “disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks.”

#### *Current Equity Data Plans*

Therefore, using its authority under Section 11A of the Securities Exchange Act, the Commission has long required the equities exchanges and FINRA (the “Participants”) to act jointly to disseminate consolidated information regarding NMS stocks. Currently, three national market system plans (the “Equity Data Plans”) approved by the Commission facilitate the collection, consolidation, and dissemination of information regarding NMS stocks. These plans are (1) the Consolidated Tape Association Plan, (2) the Consolidated Quotation Plan, and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

#### *Market Developments and Concerns*

As discussed in the proposed order, the structure of the equity markets and the corporate structure of exchanges have changed dramatically since the adoption of Regulation NMS in 2005. The speed and dispersion of trading activity have increased substantially, most exchanges have converted from entities mutually owned by their members to demutualized entities that are owned by shareholders and that also offer proprietary market data products, and “exchange groups” have emerged, consolidating much of the voting power and control of the Equity Data Plans.

In the Commission’s preliminary view, these market developments have heightened conflicts of interest between the exchanges’ commercial interests and their regulatory obligations under the Exchange Act and the Equity Data Plans to produce and provide consolidated market data. In particular, the operation of the Equity Data Plans appears not to have kept pace with the efforts of the exchanges to expand the content of—and to employ technology to reduce the latency and increase the throughput of—certain proprietary data products. The Commission also preliminarily believes that there have not been adequate improvements made to address important differences between consolidated market data and proprietary data products. Also, the Commission does not believe that, in today’s equity markets, having multiple Equity Data Plans, which need to be separately maintained and operated, is necessary or efficient.

#### *Proposed Order*

To begin the process of addressing these concerns, the Commission is publishing for comment a proposed order that would require the Participants to propose a single, new equity data plan (the “New

Consolidated Data Plan”). The Commission’s proposed order includes governance provisions that the Commission preliminarily believes would enable the New Consolidated Data Plan to address concerns that have been raised about the governance of the existing Equity Data Plans and the provision of equity market data to market participants. To the extent that the Participants have additional insights into the concerns and issues discussed in the Proposed Order, or are able to identify and suggest additional or alternative measures to those that the Commission has preliminarily set forth in the Proposed Order, the Commission will consider such information and suggestions, as well as any other comment received on the Proposed Order.

After considering any comments received on the proposed order, the Commission will consider what action to take, including whether to issue a final order requiring the Participants to file a New Consolidated Data Plan. If the Commission issues such a final order, the New Consolidated Data Plan would be published for public comment.

After considering any comments received on the New Consolidated Data Plan, the Commission would consider whether to approve the New Consolidated Data Plan with any changes or subject to such conditions as the Commission may deem necessary or appropriate. Until a New Consolidated Data Plan has been approved by the Commission, the current Equity Data Plans will continue to govern the collection, processing, and dissemination of equity market data.

The Commission is also publishing for comment proposed amendments to the existing Equity Data Plans submitted by the Participants that would (a) make mandatory their current disclosure policies with respect to conflicts of interest, and (b) establish a policy regarding the confidential treatment of any data or information generated, accessed, transmitted to, or discussed by the operating committee.

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