

[Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—SEC partially stays Reg NMS amendments pending court challenges, \(Dec. 18, 2024\)](#)

Securities Regulation Daily Wrap Up

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The stay creates a temporary hiatus for recent rule amendments relating to tick sizes and access fees while a court challenge by stock exchanges plays out.

The SEC issued an order to partially stay recent amendments to Regulation National Market System (Reg NMS) in light of a court challenge. The rule amendments, relating to tick sizes and access fees, are being contested by Nasdaq and Cboe. The stay is intended to avoid the potential for market disruption and regulatory uncertainty while the litigation proceeds ([Order Granting Partial Stay](#), Exchange Act Release No. 101899 (Dec. 12, 2024)).

Reg NMS amendments. The SEC [adopted amendments to Reg NMS](#) in September, including adding a new minimum pricing increment (tick size) for the quoting of certain NMS stocks, reducing access fee caps, and increasing the transparency of exchange fees and rebates.

The SEC [said](#) the amendments were intended to reduce transaction costs and improve market quality, helping investors obtain the best prices available.

Rule challenges. The rule amendments were quickly challenged in the D.C. Circuit by two different groups.

A [petition for review](#) was immediately filed by We the Investors, an “independent group of individual investors” represented by Squire Patton Boggs. The group challenged the Reg NMS amendments as “contrary to the standards of the Administrative Procedure Act and the Securities Exchange Act.” Several petitions by the group were [consolidated](#) and ultimately [dismissed by agreement](#).

Nasdaq and Cboe also [challenged](#) the amendments. The exchanges say they intend to raise [three issues on review](#):

1. Whether the Commission exceeded its statutory authority in promulgating the Access-Fee Rule;
2. Whether the Commission’s promulgation of the Access-Fee Rule was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because the Commission failed to acknowledge its recent uncertainty about the impact of reducing exchanges’ fees and rebates, to explain its change in position, or to identify substantial evidence supporting its adoption of the new access-fee cap;
3. Whether it would be improper to sever the minimum tick-size amendments to Rule 612 from the amendments to the access-fee cap in Rule 610 given the Commission’s acknowledgment that a sub-penny tick cannot be implemented without a modification to the existing access-fee cap.

Partial stay. Noting that the amendments were unanimously adopted, the SEC said it will continue “vigorously defending” the rules in court. The SEC affirmed its view that the amendments are consistent with the law and within its long-standing oversight authority. However, as a prudential matter, the SEC found that a partial stay avoids the potential for market disruption and regulatory uncertainty pending resolution of the litigation.

The order stays the effective date for amendments to three 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);
- 612 (reducing the minimum pricing increment for quotations and orders for certain NMS stocks).

The SEC did not stay the effective date for amendments to Rule 610(d), which requires 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 also did not stay amendments related to odd-lot information in Rule 603(b) or Rule 600(b), nor any other Commission rules or guidance.

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