

## [Securities Regulation Daily Wrap Up, TOP STORY—SEC directs exchanges and FINRA to draft single NMS plan for the dissemination of market data, \(May 6, 2020\)](#)

Securities Regulation Daily Wrap Up

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Plan to increase transparency and address inefficiencies, conflicts of interest and other issues presented by the current governance structure must be submitted within 90 days.

On the tenth anniversary of the market "flash crash," the SEC voted unanimously to issue an order requiring the equity exchanges and FINRA to submit a new national market system plan (NMS plan) with a modernized governance structure for the production of public consolidated equity market data and the dissemination of trade and quote data from trading venues. Separately, the Commission also approved amendments to the existing NMS plans designed to address conflicts of interest and the protection of confidential information.

The SEC issued a proposed order in January and made some adjustments to final order based the feedback it received in more than 30 comment letters. The new plan will be subject to public comment once submitted, and until the Commission approves a new NMS plan the current plans will continue to govern.

The plan will replace the current tiered system in which consolidated public data feeds are distributed through three equity data plans that are decades old. SEC Chairman Jay Clayton [said](#) that it is time for a new plan that addresses the conflicts created by the existing system between the exchanges' business interests in proprietary data offerings and their obligations as self-regulatory organizations to ensure prompt, accurate, and fair dissemination of consolidated market data through the jointly administered equity data plans.

Clayton believes the new plan will accomplish that by, among other things, requiring the modernization of the governance structure for NMS plans that provide consolidated equity market data to market participants. It also will drive significant efficiencies by replacing the three existing plans with a single approach to disseminating consolidated equity market data, he said.

Clayton noted that some commenters asked about the relationship between this effort to improve the governance structure for consolidated data and the Commission's proposed rulemaking on market data infrastructure. The two efforts address distinct aspects related to the provision of consolidated equity market data, he said. Specifically, this order speaks to the governance structure for consolidated market data and is designed to ensure that conflicts of interest in NMS plan governance are appropriately managed, while the market data infrastructure proposal addresses the operational structure of the securities information processors (SIPs).

Commissioner Allison Herren Lee [supported](#) the order despite her concerns, which she expressed at the time of the January proposed order, that the governance changes, standing alone, may prove insufficient to address certain conflicts of interest because the new voting members would lack the voting power, and may lack the incentives, to affirmatively usher in needed reforms. She also expressed concern that a protracted, piece-by-piece approach may never yield the full package of needed reforms. At the meeting, she said that it is clear that the Commission has made significant headway on numerous fronts toward improving the public market data streams. While she believes that some of the reforms on the table could and should be improved, she acknowledged the enhancements made by the order.

**Minimum requirements.** Under the [order](#), the plan submitted by the exchanges and FINRA must meet certain specified minimum terms and conditions. The new plan must provide for the orderly transition of functions and responsibilities from the three existing equity data plans and provide that dissemination of, and fees for, SIP data will continue to be governed by the existing plans until the new plan is ready.

In addition, the new plan must provide that each exchange group and unaffiliated SRO will be entitled to name a member of the operating committee (SRO member), who will be authorized to cast one vote on all operating committee matters pertaining to the operation and administration of the new plan. An SRO member representing an exchange group or an unaffiliated SRO whose market center(s) have consolidated equity market share of more than 15 percent during four of the six calendar months preceding a vote of the operating committee may cast two votes, and any SRO member representing an exchange that has ceased, or has yet to commence, operations as an equity trading venue, will not be entitled to vote.

**Operating committee representation.** The new plan must provide that the operating committee will include, for a term of two years, and for a maximum term to be set forth in the plan, individuals representing each of the following categories: 1) an institutional investor, a broker-dealer with a predominantly retail investor customer base, 2) a broker-dealer with a predominantly institutional investor customer base, 3) a securities market data vendor, an issuer of NMS stock, and 4) a person who represents the interests of retail investors (retail representative) (collectively, non-SRO members).

Representatives of the securities market data vendor and the issuer may not be affiliated or associated with an SRO, a broker-dealer, or an investment adviser with third-party clients. The retail representative must have experience working with or on behalf of retail investors and have the requisite background and professional experience to understand the interests of retail investors, the work of the operating committee of the new plan, and the role of market data in the U.S. equity market. The retail representative may not be affiliated with an SRO or a broker-dealer.

Under the order, the new plan must provide that the initial non-SRO members will be selected by a majority vote of those current members of the equity data plans' advisory committees, excluding advisory committee members who were selected by a participant to be its representative. Subsequent non-SRO members may be selected solely by the then-serving non-SRO members of the new plan's operating committee. Until the initial non-SRO members have been selected, the participants will renew the expiring terms of all members of the plans' advisory committee.

The new plan must provide for a fair, transparent, and public nomination process for non-SRO members and specify a process for publicly soliciting and making available for public comment nominations for non-SRO members. The new plan also must provide that the aggregate number of votes provided to non-SRO members will, at all times, be one-half of the aggregate number of SRO member votes, and the number of non-SRO member votes will increase or decrease as necessary to ensure that the ratio is maintained.

**Augmented majority vote.** The new plan must provide that all actions under the terms of the new plan, except the selection of non-SRO members and decisions to enter into an SRO-only executive session, will be required to be authorized by an augmented majority vote, which is defined as a super majority vote of the new plan's operating committee, along with a majority vote of the SRO members of the operating committee.

The order outlines the specific responsibilities of the operating committee that the new plan must include. In addition, the order states that the new plan must provide that the independent plan administrator will not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks. It also must include provisions designed to address the conflicts of interest of SRO members and non-SRO members.

The new plan must include provisions designed to protect confidential and proprietary information from misuse, and must identify the circumstances in which SRO members may meet in executive session and will confine executive sessions to circumstances in which it is appropriate to exclude non-SRO members.

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