

SEC Adopts Rules to Modernize Equity Market Data Content and Infrastructure

January 7, 2021

On December 9, 2020, the U.S. Securities and Exchange Commission (SEC) voted unanimously to adopt amendments to the content of consolidated market data for equities and the manner in which such data is distributed to market participants.¹ As detailed further below, consolidated market data would now contain additional content including five levels of depth-of-book data and certain odd-lot quotations. Once the amendments are fully implemented, consolidated market data would be distributed by competing consolidators rather than the current exclusive securities information processors (SIPs).

The amended rules represent the most significant changes to equity market structure since the SEC's adoption of Regulation NMS in 2005.² However, the SEC may face additional hurdles to full implementation as some exchanges have indicated through their comment letters that they may seek judicial review of the amended rules.³ Several exchanges have already sought judicial review of the SEC's order requiring operational and governance changes to the national market system plan (NMS Plan) that governs the distribution of consolidated market data.⁴

I. Key Components of the Adopted Rules

The purpose of the amended rules is to modernize the national market system and to address a number of issues relating to the distribution of market data including the increased latency of consolidated market data relative to the exchanges proprietary data feeds. The three central components of the adopted rules are described below.

1. Expanding the Content of Consolidated Market Data — The SEC believes that the collection and distribution of consolidated market data via the exclusive SIPs have not kept pace with technological and market developments and no longer satisfy the needs of many market participants who believe they need to subscribe to the exchanges' proprietary data products to trade competitively.

a. Currently, consolidated market data produced by the SIPs generally consists of "core data," which is the price, size, and exchange of the last sale; each exchange's highest bid and lowest offer (BBO) and the quantity available at those prices (also known as "top of book data"); and the national best bid and offer (NBBO).

b. Under the adopted rules, consolidated market data would be expanded to include

i. *Core data* — would include the current core data items noted above but would add

1. five levels of depth-of-book data (i.e., quotes from each exchange at each of the next five price levels)
 2. odd-lot quotations priced equal to or better than the NBBO, aggregated at each price level at each self-regulatory organization (SRO)⁵
 3. exchange auction information, such as opening, reopening, and closing auction transactions
- ii. *Regulatory data* — such as short sale circuit breakers, opening and closing prices from the primary listing exchange, and trading halt information
 - iii. *Administrative data* — administrative, control, and other technical messages that the NMS Plan may require
 - iv. *SRO specific program data* — such as data relating to exchanges' retail liquidity programs
 - v. *NMS Plan data* — additional data elements as determined by the NMS
- 2. Modifying Round Lot Tiers** — To provide investors with information about better-priced orders in high-priced stocks, the SEC adopted round lot quantities of less than 100 shares for certain higher-priced securities (see below for the adopted round lot tiers).
- 3. Modifying the Means of Distribution of Consolidated Market Data** — As noted, the amended rules would decentralize the distribution of consolidated market data currently performed by the exclusive SIPs and instead rely on “competing consolidators” that would be responsible for collecting, consolidating, and disseminating consolidated market data products to the public.
- a. *NMS Plan* — The NMS Plan would continue to serve a variety of functions including (i) developing the fees for the data content underlying consolidated market data; (ii) developing certain reports and performance metrics related to competing consolidators; and (iii) considering additional data elements to be included as part of consolidated market data in the future.
 - b. *Self-Aggregators* — Under the adopted rules, SROs, broker-dealers, and registered investment advisers would be permitted to generate their own consolidated market data for internal use (and use by SEC-registered affiliates) at the prices established by the NMS Plan.
 - c. *SRO Distribution of Data and Latency Neutralization* — SROs will be required pursuant to amended Rule 602(b) to make available to all competing consolidators and self-aggregators its information regarding quotes and transactions in NMS stock “in the same manner and using the same methods, including all methods of access and the same format” as that data is made available to any person.
 - d. *Competing Consolidators* — Competing consolidators would register with the SEC pursuant to Form CC and would be required to comply with new Rule 614, which sets forth the obligations and responsibilities of competing consolidators.

II. Notable Changes From the Proposing Release to the Adopting Release

The amended rules were adopted largely as proposed with certain notable exceptions.⁶ These include

the following:

- *Round Lot Tiers* – The SEC amended the proposed round lot tiers such that most securities will continue to have a round lot of 100 shares (i.e., securities priced between \$0 and \$250 per share).

PROPOSED ROUND LOT TIERS		ADOPTED ROUND LOT TIERS	
Price Group	Round Lot Size	Price Group	Round Lot Size
\$0–\$50	100 SHARES	\$0–\$250	100 SHARES
\$50.01–\$100	20 SHARES	\$250.01–\$1000	40 SHARES
\$100.01–\$500	10 SHARES	\$1000.01–\$10,000	10 SHARES
\$500.01–\$1,000.00	2 SHARES	\$1000.01 +	1 SHARE
\$1,000.01 +	1 SHARE		

- *Protected Quotations* — Under the final rules, all quotations in each applicable round lot quantity will be “protected” for purposes of the Order Protection Rule.⁷
 - Under the SEC’s original proposal, only 100 share orders would have been protected, and round lot quotations in higher-priced securities for less than 100 shares would not have been protected.
- *Odd lots* — Under the final rules, core data will include odd-lot quotations priced greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each SRO, in addition to odd-lot transaction data.
 - As proposed, odd lots were not an independent element of core data, but odd lots that, when aggregated, equaled a round lot would have been included at the least aggressive price of the aggregated odd-lot orders.
- *Self-Aggregators and Affiliate Sharing* — As noted, under final rules, broker-dealers, investment advisers, and SROs may act as self-aggregators. They may also share their consolidated market data with other SEC-registered affiliates.
 - Under the SEC’s original proposal, only broker-dealers would have been permitted to act as self-aggregators, and it was unclear whether any sharing by a self-aggregator with affiliates would have been permissible.
- *Best Execution Guidance* — The SEC provided guidance with respect to best-execution obligations noting that “the changes to consolidated market data resulting from the amendments may be relevant to a broker-dealer’s best execution analysis.”⁸

- The SEC states that both “the additional data content and the new method by which such data will be disseminated represent market and technology changes that should be considered by broker-dealers in connection with their best execution obligations.”⁹
- The SEC noted in particular that “the selection of a competing consolidator may also be relevant to a broker-dealer’s ability to achieve and analyze best execution” and indicated that competing consolidators’ disclosures and monthly performance metrics can be used to that end.¹⁰
- *Competing Consolidators and Regulation SCI* — Under the final rules, only a newly defined “SCI competing consolidator” would subject competing consolidators to Regulation SCI, after a one-year transition period (the SCI CC Phase-in Period)¹¹ if, during at least four of the preceding six calendar months, it accounted for 5% or more of consolidated market data gross revenue paid to the NMS Plan for NMS stocks listed on (i) the New York Stock Exchange (NYSE), (ii) Nasdaq, or (iii) exchanges other than NYSE and Nasdaq.
 - During the SCI CC Phase-in Period, competing consolidators will be subject to certain requirements similar to Regulation SCI, as set forth in Rule 614(d)(9). After the SCI CC Phase-in Period, competing consolidators that do not meet the definition of a SCI competing consolidator will remain subject to Rule 614(d)(9).
 - Under the original proposal, the SEC proposed to apply Regulation SCI to competing consolidators but did not propose a phase-in period for compliance or a threshold for Regulation SCI to apply.

III. Implementation Timeline

The SEC proposed a lengthy implementation timeframe to facilitate the transition from the exclusive SIPs to competing consolidators, including a period of time during which they will operate in parallel. An overview of the implementation timeline to transition to competing consolidators (CCs) is set forth below.

CC MODEL IMPLEMENTATION TIMELINE

	Event	Due Date / Duration
	Federal Register publication date	To be determined
	Effective date	60 days after Federal Register publication date
PHASE I	NMS Plan amendment conforming to final rules	150 days after effective date
	SEC approval of amendment (the Approval) including fees for consolidated market data	90-300 days after publication of the NMS Plan amendment in the Federal Register ¹²
	Initial CC registration period	90-day period from Approval
	CC development period	180 days from Approval (and overlapping with CC registration period)
	Testing period	90 days from end of the CC development period
	Phase I go-live date	Commences at the end of the testing period
PHASE II	Parallel operation period with exclusive SIPs	180 days
	NMS Plan recommendation to retire exclusive SIPs	Due within 90 days of end of the parallel operation period
	SEC Approval of NMS Plan amendment to retire exclusive SIPs	90-300 days after publication of NMS Plan amendment
PHASE III	Other CCs allowed to register once the exclusive SIPs are retired	CCs that do not register during the initial CC registration period will not be allowed to register until Phase III commences

¹ Securities Exchange Act Release No. [90610](#) (Dec. 9, 2020) (*Federal Register* citation pending) (“Adopting Release”). This represents a relatively rare unanimous vote by the Commissioners during 2020.

² Securities Exchange Act Release No. [51808](#), 70 FR 37495 (June 29, 2005).

³ In their comment letters on the proposing release, certain exchanges have argued, among other things, that (i) the expansion of core data amounts to physical taking without just compensation in violation of the Fifth Amendment’s Taking Clause; (ii) the expanded information in core data is not

necessary or relevant to many investors who may face higher costs for consolidated market data; (iii) certain components of the rules (e.g., round lot tiers; access to non-core data) lack sufficient economic analysis to justify adoption; and (iv) the rules are not appropriately tailored to the market, overly broad, and unnecessarily complex.

⁴ *The Nasdaq Stock Market LLC, et al., v. SEC*, Case No. 20-1181 (D.C. Cir. 2020).

⁵ Odd lots priced less aggressively than the NBBO are not included in core data unless they aggregate to a round lot and are within the first five price levels after the NBBO.

⁶ For an overview of the proposed market data infrastructure rules, please see our client alert available [here](#).

⁷ 17 CFR 242.611.

⁸ Adopting Release at 38.

⁹ *Id.* at 39.

¹⁰ *Id.* at 42.

¹¹ The one-year transition period, referred to as the SCI CC Phase-in Period, commences upon the compliance date for competing consolidators to comply with Rule 614(d)(3), which requires competing consolidators to make consolidated market data products available to subscribers on a consolidated basis on terms that are not unreasonably discriminatory. The compliance date for Rule 614(d)(3) will be 270 days from the date of the SEC's approval of the amendments to the NMS Plan to conform to the final rules.

¹² The SEC generally must approve or disapprove the NMS Plan amendment within 90 days but can extend this time period up to 300 days. 17 CFR 242.608(b)(2).

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