

Summary
of the SEC's
Proposed Changes
to the National
Market System

In the first 45 days of 2020,¹ the SEC issued two proposals that, together, describe a new frontier of equity market structure that would change profoundly how U.S. equity markets function. The proposals would change nearly every rule of Regulation NMS, touching every quote and trade, every individual and institutional investor, every broker, dealer and market maker, every market data vendor and consumer, and every execution venue.² The proposals exceed in length, scope, complexity, and potential impact any prior proposal from the modern era of equity trading whether by the SEC itself or by the Equity Market Structure Advisory Committee that the SEC convened to recommend market structure reforms.

Nasdaq urges every market participant to analyze the proposals and express their views, whether supportive or opposed, in whole or in part, mildly or with intensity. In the interest of promoting awareness and kick-starting discussion, Nasdaq has assembled this high-level summary of nearly 700 pages of documentation. Briefly, the proposals would:

Create Multiple SIPs

The Commission proposes to replace the two Securities Information Processors (SIPs) in operation today (one for the UTP Plan and one for the CTA Plan) with an estimated twelve “competing consolidators” upon full implementation of the proposal.³ These competing consolidators would be supplemented by “self-aggregators,” which would generate consolidated market data for their own accounts or to execute customer transactions, but would not be authorized to distribute data externally.

Eliminate the Unified NBBO

Substitute a National Best Bid and Offer (NBBO) from a single processor with the potential for NBBOs from multiple processors. The NBBO is the best bid and best offer for an NMS security that is calculated and disseminated on a current and continuous basis by the two SIPs currently in operation (which each distribute NBBOs for different “tapes”). The proposal is to replace a single NBBO with localized NBBOs, defined as the best bid and best offer that is calculated and disseminated on a current and continuing basis by a competing consolidator or calculated by a self-aggregator.

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- ¹ See Securities Exchange Act Release No. 87906 (January 8, 2020), 85 FR 2164 (January 14, 2020) (File No. 4-757) (the “January Proposal”) (80 pages) and Securities Exchange Act Release No. 88216 (February 14, 2020) (File No. S7-03-20) (the “February Proposal”) (597 pages).
 - ² The January Proposal is in the form of an order for the exchanges and FINRA to submit a new National Market System Plan under Rule 608 (Filing and amendment of national market system plans). The February Proposal will change Rules 600 (NMS security designation and definitions) and 603 (Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stock), and add new rule 614 (Registration and responsibilities of competing consolidators). As discussed below, the operation of the following other rules will be impacted: 602 (Dissemination of quotations in NMS securities), 604 (Display of customer limit orders), 605 (Disclosure of order execution information), 606 (Disclosure of order routing information), 610 (Access to quotations), 611 (Order protection rule), 201 (Circuit breaker), and 1000 (Regulation SCI definitions).
 - ³ February Proposal at 193

Expand “Core” Data

Today, “core” data is the price, size and exchange of the last sale and the national best bid and offer. The SEC proposes to add depth of book data (aggregated quotes at each price between the best bid and offer and the protected bid and offer, as well as five price levels beyond the protected bid and offer), plus single-market auction data and certain regulatory and administrative data.

Create “Round Lots” of Fewer Than 100 Shares

The Commission proposes to introduce a tiered definition of “round lot” that would reduce the number of shares required to constitute a round lot for stocks selling at more than \$50 per share to less than 100 shares, depending on the price of the stock.

Require Order Display Without Protection

The Commission proposes to modify order protection and locked and crossed markets rules so that they do not apply to round-lots of under 100 shares. The Order Protection Rule requires trading centers to have policies and procedures in place reasonably designed to prevent trade throughs of protected bids or protected offers in round lots of NMS stocks—and rules designed to avoid the display of quotations that lock or cross any protected quotation in an NMS stock.

DISCUSSION

A. Increase the Number of Securities Information Processors

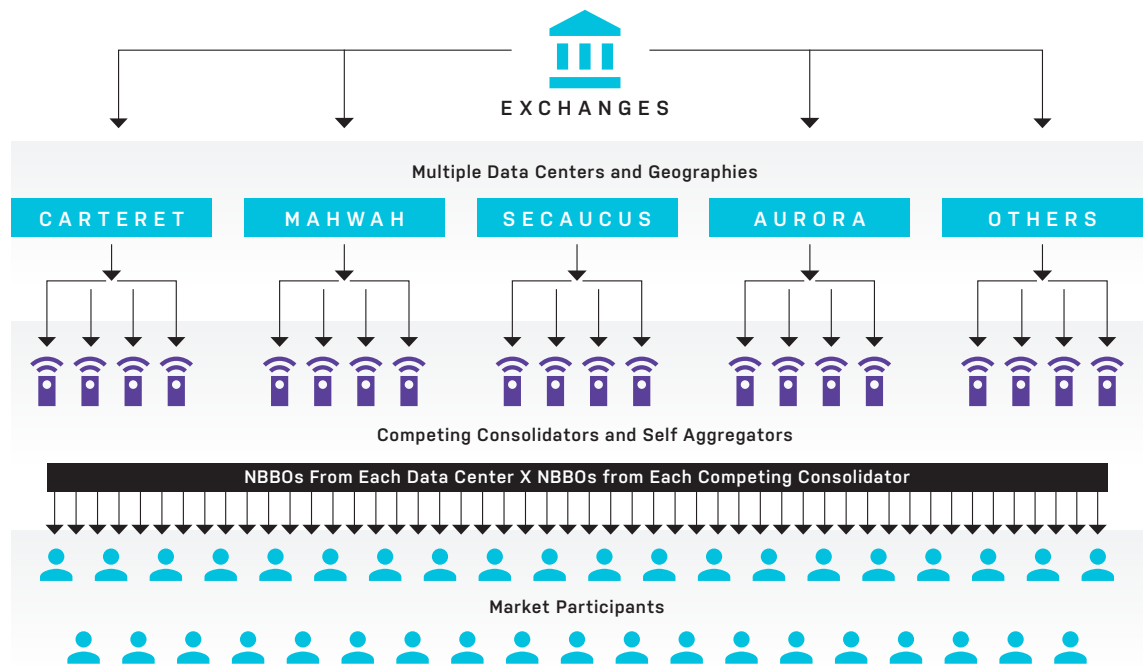
The Commission proposes to replace the two SIPs in operation today (one for the UTP Plan and one for the CTA Plan) with an estimated twelve competing consolidators⁴ upon full implementation of the proposal.⁵ The competing consolidators would be supplemented by self-aggregators, which would generate consolidated market data for their own accounts or to execute customer transactions, but would not be authorized to distribute data externally.⁶

1. THE ROLE OF THE COMPETING CONSOLIDATOR

The competing consolidator is one of three distribution models that have been discussed in recent years by the SEC and other market participants. The current model is to distribute core data through two SIPs, which operate out of two separate locations. Another possible model, the Distributed SIP, which has been advanced by several exchanges and advocated by the SEC in January 2020, would allow the current SIPs to distribute information from multiple locations to reduce geographic latency. The competing consolidator model was included by the SEC in its 2020 proposal and would replace the UTP and CTA Plan SIPs with multiple separate and independent SIPs operating at different geographic locations.

These three models are mutually exclusive in that they are all based on different regulatory structures and hardware and software configurations. The competing consolidator model is graphically illustrated as follows.

Competing Consolidators v. UTP/CTA Processors v. Distributed SIP



⁴ *Id.* at 1.

⁵ *Id.* at 542.

⁶ *Id.* at 250.

The Commission proposes to define competing consolidator as a securities information processor that is registered with the Commission and which generates and disseminates consolidated market data regarding quotations and transactions in NMS stocks.⁷ Competing consolidators would be required to develop one product that contains all consolidated market data,⁸ but may also develop other market data products that contain only a subset of consolidated market data elements (such as a top-of-book product) and could develop market data products that contain elements that go beyond the elements required under the proposed definition of consolidated market data (such as a full depth-of-book product).⁹

Registration would be accomplished by filing a “Form CC”¹⁰ with the Commission, which would require a competing consolidator to provide information on business organization, operational capability, and services and fees.¹¹ Competing consolidators would also be required to publish monthly¹² performance statistics on capacity, system availability, and latency, and other metrics.¹³ A competing consolidator that seeks to terminate operations due to performance issues would be required to publish notice of cessation of operations at least 30 business days prior to cessation.¹⁴

Competing consolidators would be subject to Regulation SCI,¹⁵ which governs the technology infrastructure of the U.S. securities markets.¹⁶ Broadly speaking, Regulation SCI requires covered firms to take corrective action when systems issues occur, notify the Commission regarding systems problems and changes, inform members and participants about systems issues, conduct business continuity and disaster recovery testing, review systems annually, and maintain certain books and records.¹⁷

The current SIPs are “critical” SCI systems,¹⁸ which means that they are subject to certain heightened requirements.¹⁹ The proposed competing consolidators would not be considered critical systems.²⁰

2. THE ROLE OF THE SELF-AGGREGATOR

In contrast to Competing Consolidators, self-aggregators are broker-dealers that would collect and generate consolidated market data for use on their own behalf or on behalf of their customers,²¹ but would be prohibited from distributing consolidated market data to any subsidiary or other affiliate or customer.²² They would not register with the Commission,²³ and their fees for consolidated data would be set by the new NMS Plan.²⁴ If they delivered this data externally, they would not be eligible to be a self-aggregator. Self-aggregators would be entitled to receive the data directly from the exchanges.

⁷ *Id* at 198; see also February Proposal at 19 (explaining that competing consolidators “would be responsible for collecting, consolidating, and disseminating consolidated market data to the public”).

⁸ *Id* at 220.

⁹ *Id* at 220; see also *Id* at 171 (“Competing consolidators and self-aggregators could choose to purchase products that include only the proposed consolidated market data elements or products that contain elements of both proposed consolidated market data and other proprietary data.”).

¹⁰ *Id* at 200-201.

¹¹ *Id* at 229. See *Id* at 229-232 for a full discussion of Form CC.

¹² *Id* at 223.

¹³ *Id* at 189; see also *Id* at 201 (“[C]ompeting consolidators should be subject to certain obligations and should regularly publish certain performance statistics on a monthly basis on their respective websites pursuant to proposed Rules 614(d)(5) and (6).”).

¹⁴ *Id* at 200-201.

¹⁵ *Id* at 236; see also *Id* at 167-68 (“[T]he Commission is proposing to amend Regulation SCI to expand the definition of “SCI entities” to include competing consolidators . . .”).

¹⁶ *Id* at 234.

¹⁷ *Id* at 234-35.

¹⁸ *Id* at 238.

¹⁹ *Id* at 235.

²⁰ *Id* at 238.

²¹ *Id* at 250.

²² *Id* at 250-51.

²³ *Id* at 255.

²⁴ *Id* at 251-52.

3. THE ROLE OF THE SROS

The SROs would be required to provide all data necessary to generate consolidated market data at one location near their matching engine.²⁵ Exchanges would be permitted to offer different connectivity options (e.g., with different latencies, throughput capacities, and data-feed protocols), provided that all such options would be made available to all customers.²⁶ Proposed Rule 603(b) would require exchanges to provide all forms of access used for proprietary data to all competing consolidators and self-aggregators for the collection of the data necessary to generate proposed consolidated market data.²⁷

SROs that are owned or controlled by an entity that offers market data products would not be allowed to become an administrator of an equity NMS Plan.²⁸

In the February release, the SEC requested comments in response to approximately 300 separate questions. Questions pertinent to this section include the following:²⁹

- Is a decentralized consolidation model with competing consolidators and self-aggregators a viable and/or appropriate model for the collection, consolidation, and dissemination of consolidated market data?³⁰
- Do commenters believe that there would be sufficient interest in entities that would become competing consolidators?³¹
- Do commenters believe that competing consolidators would provide the necessary competition to lower the processing time and distribution speeds for consolidated market data, as proposed to be defined, as well as reduce the overall costs of proposed consolidated market data?³²
- How large would be the barriers to entry to becoming a competing consolidator?³³
- How would the Commission's assessment of the economic effects of the rule be affected by too few competing consolidators?³⁴
- Will the change to a proposed competing consolidator/self-aggregator model present any specific operational and/or regulatory challenges to market participants?³⁵
- Do commenters believe that Regulation SCI should apply to competing consolidators? If so, do commenters believe that the proposed revisions to Rule 1000 of Regulation SCI are appropriate?³⁶
- Is there a potential for a systems issue at a competing consolidator to have an adverse impact on the maintenance of fair and orderly markets? If so, what do commenters believe would be the most effective way to mitigate that potential?³⁷

²⁵ *Id* at 175.

²⁶ *Id* at 254.

²⁷ *Id* at 174.

²⁸ January Proposal, 85 FR 2164, 2183 (The "administrator of the New Consolidated Data Plan should be independent, meaning that the administrator should not be owned or controlled by a corporate entity that separately offers for sale a market data product, either directly or via another subsidiary."); *see also id.* ("an entity that acts as the administrator while also offering its own proprietary data products faces a substantial, inherent conflict of interest, because it would have access to sensitive customer information.").

²⁹ The questions listed in this document is not a full list of the approximately 300 questions asked by the Commission; they are, rather, a curated summary of the key issues presented.

³⁰ February Proposal at 198

³¹ *Id* at 199.

³² *Id* at 199.

³³ *Id* at 478.

³⁴ *Id* at 479.

³⁵ *Id* at 199.

³⁶ *Id* at 246.

³⁷ *Id* at 246.

- Is the distributed SIP alternative a viable or superior alternative to the proposed competing consolidator and self-aggregator model?
- Do you believe the proposed amendments would have effects on competition that the Commission has not recognized? Please explain in detail.³⁸

B. Expand the Authority of the NMS Plans to Set Prices for Exchange Data

Participants in the new NMS Plans would develop and file with the Commission a fee schedule for the sale of data to competing consolidators and self-aggregators.³⁹ They would also set the fees for the proprietary data products of the exchanges that provide any of the newly defined “core data.”⁴⁰ With regard to setting fees, the Commission states that fees “can be shown to be fair and reasonable if they are reasonably related to costs,”⁴¹ and must reflect the changes to the definition of core data as described below.⁴²

A new NMS plan reflecting the SEC proposals would be required to be submitted by the new Plan member, including the new fee schedule, within 60 calendar days of the effective date of the new proposed Rule 614.⁴³ To put the timing of this release in context, other market structure releases have taken much longer. For example, the UTP/CTA operating committee recently required six months to develop conflict-of-interest disclosures (November 2018 - May 2019); five months for a confidential information policy (April 2019 - September 2019); and six months for policy guidelines on advisor participation (August 2019 - February 2020).

Additionally, complete plans have taken years to draft. The UTP Plan began to develop a plan to form itself into a limited liability company, CTC Plan, LLC, in approximately October of 2013; a completed plan was submitted to the Commission in July of 2015, nearly two years later, and the Commission has never acted upon it. The Commission directed the SROs to submit a plan for the Consolidated Audit Trail (CAT) in September 2012, which was submitted in September 2014, and approved in August 2016. The plan to Address Extraordinary Market Volatility, known as the Limit Up - Limit Down (“LULD”) Plan, began development in the aftermath of the “Flash Crash” on May 6, 2010, and was approved on May 31, 2012,⁴⁴ although full implementation did not occur until May 12, 2014.⁴⁵

The SEC requested responses to the following questions related to fees:

- Do commenters believe that the effective national market system plan(s) for NMS stocks should include fees for different types of proposed consolidated market data products, such as products that contain only a subset of proposed core data elements (e.g., a TOB product)? If so, what products should be included?⁴⁶
- Do you agree with the Commission’s assessment of the potential effect of the proposal on data fees? In particular, do commenters agree with the Commission’s conclusion that the proposal could reduce overall data fees?⁴⁷

³⁸ *Id* at 529.

³⁹ February Proposal at 258-59; *see also* *Id* at 172 n.433 (“Fees for proposed consolidated market data would be subject to the NMS plan process pursuant to Rule 608 of Regulation NMS. *See* *infra* Section IV.B.4 for a discussion of the effective national market system plan(s).”); *Id* at 194 (“[T]he SROs would continue to develop jointly the fees associated with the provision of the proposed consolidated market data through an effective national market system plan(s) for NMS stocks. These fees would be subject to Commission oversight under Rule 608.”).

⁴⁰ February Proposal at 258-59.

⁴¹ *Id* at 173.

⁴² *Id* at 260.

⁴³ *Id* at 258.

⁴⁴ *See* <http://www.luldplan.com/>.

⁴⁵ *See* <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETU2014-09>. It is reasonable to expect that Commission staff might also review drafts of the Plan before its formal submission, as has been the case in some of the plans cited in this paragraph.

⁴⁶ February Proposal at 266.

⁴⁷ *Id* at 479.

- Is there anything different about having competing consolidators or changing the content of consolidated market data that should affect the analysis of the fairness and reasonableness of fees for data distributed pursuant to an NMS plan, or how the NMS plan participants demonstrate the fairness and reasonableness of those fees?⁴⁸

C. Change the Voting Structure of Equity NMS Plans

In January of 2020,⁴⁹ the Commission proposed a number of changes to the governance of the UTP and CTA operating committees. These changes would affect the composition of the advisory committee, the voting power of individual exchanges, and the functions of the operating committee. Although the January and February proposals are somewhat contradictory,⁵⁰ the Commission has stated that it intends to apply the January structural changes to the February Proposal.⁵¹ Nasdaq's best effort to reconcile the two proposals follows.

1. ADVISORY COMMITTEE COMPOSITION

The current UTP/CTA Operating Committee has an advisory committee with at least one representative from each of five categories of stakeholders.⁵² The new NMS Plan would be slightly different, with at least one representative from each of six categories: (1) an institutional investor (such as an asset management firm); (2) a broker-dealer with a predominantly retail investor customer base; (3) a broker-dealer with a predominantly institutional investor customer base; (4) a securities market data vendor; (5) an issuer of NMS stock; and (6) a retail investor.⁵³ The Commission removed the ATS representative because that role overlaps with that of the institutional broker-dealer.⁵⁴

The following chart compares the composition of the current and proposed advisory committees:

Current Advisory committee	New Advisory Committee
Broker-dealer (with substantial retail investor customer base)	Broker-dealer (with substantial retail investor customer base)
Broker-dealer (with substantial investor customer base)	Broker-dealer (with substantial investor customer base)
Data Vendor	Securities Market Data Vendor
Investor	Retail Investor
	Issuer of NMS Stock
	Institutional Investor
ATS	

⁴⁸ *Id.* at 178.

⁴⁹ See Securities Exchange Act Release No. 87906 (January 8, 2020), 85 FR 2164 (January 14, 2020) (File No. 4-757) (the "January Proposal").

⁵⁰ See Letter from Joan Conley to Vanessa Countryman regarding proposed order directing the Exchanges and FINRA to submit a new National Market System Plan, 85 FR 2164, File No. 4-757 (February 28, 2020), available at <https://www.sec.gov/comments/4-757/4-757.htm> (discussing contradictions between the two orders).

⁵¹ February Proposal at 19-20 (stating that the NMS Plan "would continue to serve an important role in the national market system by, among other things, governing the SROs' provision of the data necessary to generate consolidated market data, including setting fees for the provision of such SRO data to competing consolidators and self-aggregators.").

⁵² January Proposal, 85 FR 2164, 2177. The current advisors are: (1) A broker-dealer with a substantial retail investor customer base, (2) a broker-dealer with a substantial institutional investor customer base, (3) an ATS, (4) a data vendor, and (5) an investor. Although the advisor is selected to represent a segment of the industry, the advisor serves in his or her individual capacity, not as a representative of a firm or other organization.

⁵³ *Id.* at 2179; see also *id.* at 2179-2180 (stating that In addition, a person affiliated with an SRO or a broker-dealer would not be allowed to serve as the representative of an issuer, a retail investor, or a market data vendor)..

⁵⁴ *Id.* at 85 FR 2164, 2179-2180 ("ATSs and institutional broker-dealers serve similar roles in the markets, as they both operate as over-the-counter trading venues.")

The individuals for these roles would be selected by the current advisory committee of the UTP and CTA Plans, without a formal role for the SRO participants in the selection process.⁵⁵ Although the membership of the advisory committee is basically the same as before, their functions would be different. The current UTP and CTA plans are charged with disseminating a relatively narrowly-defined set of core data, while the new NMS Plan would have broader functions consistent with the expanded functions of the NMS Plans discussed above and the broader definition of core data discussed below.

2. VOTING STRUCTURE

The Commission proposes to replace a voting structure based on one vote per exchange with one based on “exchange groups,” defined as multiple exchanges operating under one corporate umbrella.⁵⁶ It also proposes to allow certain members of the NMS Plan advisory committee a vote.⁵⁷

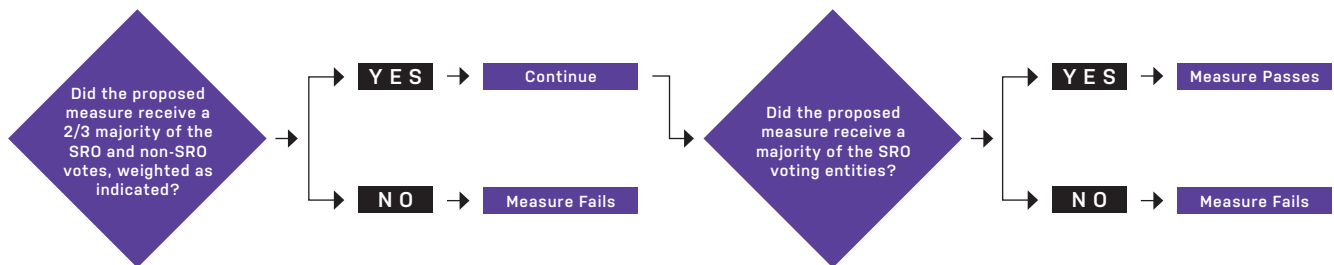
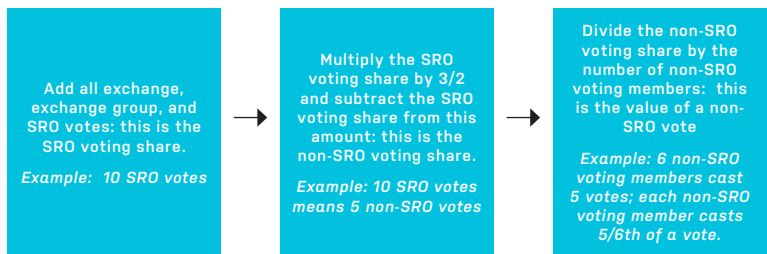
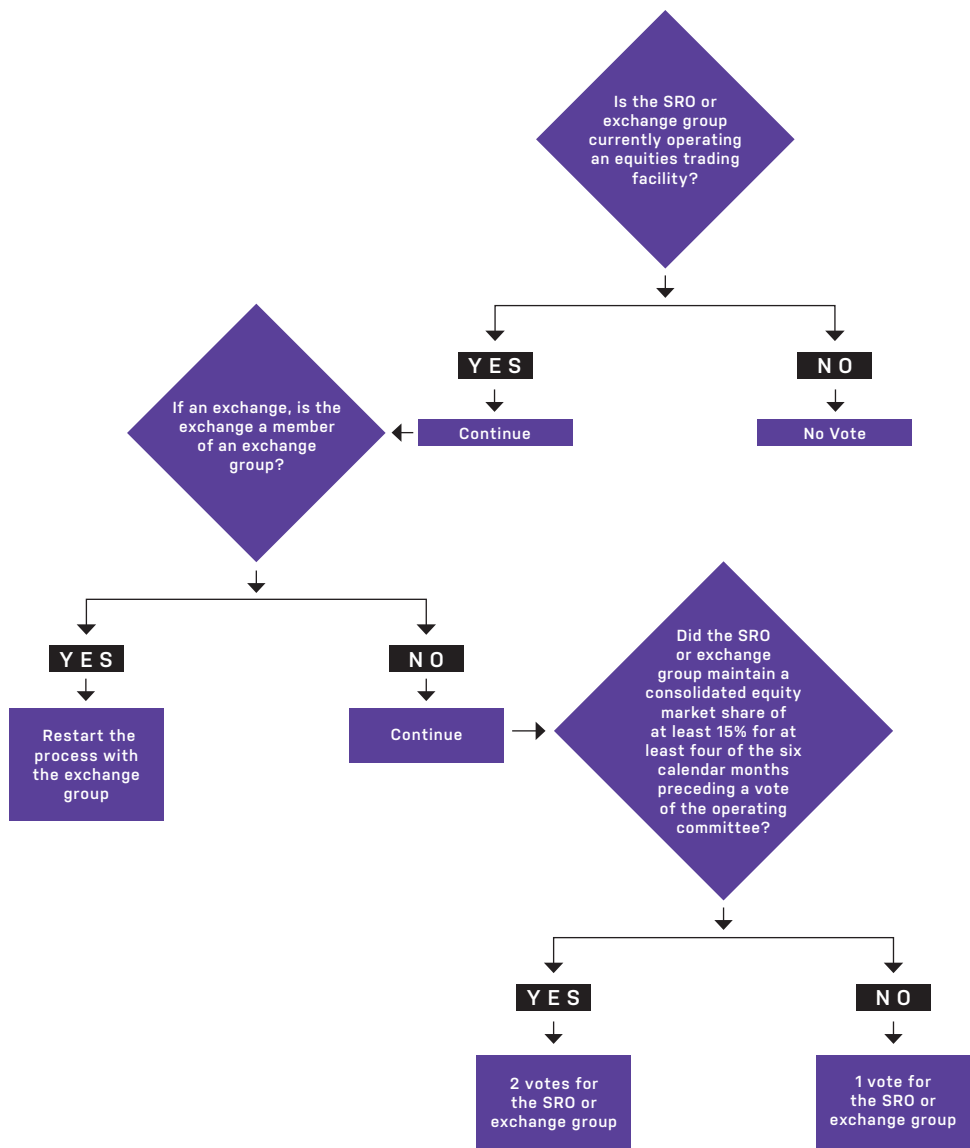
Currently, all voting for the UTP and CTA Plans is by SRO. Under the newly-proposed concept of exchange group voting, each unaffiliated SRO and exchange group would have one vote on the operating committee, and a second vote if the exchange or exchange group maintains a consolidated equity market share of at least 15% for at least four of the six calendar months preceding a vote of the operating committee.⁵⁸

⁵⁵ *Id.* at 2180 (“[T]he Commission believes that the initial non-SRO operating committee members should be selected by the current members of the Equity Data Plans’ advisory committees, excluding advisory committee members who were selected by a Participant to be its representative, and subsequent non-SRO members should be selected solely by the then-serving non-SRO members of the New Consolidated Data Plan operating committee.”); see also January Proposal, 85 FR 2164, 2180 (stating that the new plan should set term limits for advisors).

⁵⁶ *Id.* at 2168.

⁵⁷ The voting structure proposed by the Commission differs significantly from EMSAC recommendations or any existing voting model of voting.

⁵⁸ January Proposal, 85 FR 2164, 2176. The Commission defines “consolidated equity market share” to mean the average daily dollar equity trading volume of an exchange group or unaffiliated SRO as a percentage of the average daily dollar equity trading volume of all of the SROs, as reported by the Equity Data Plans. See *id.* at 2175 n.141. An exchange that ceases operation as an equity trading venue would not have a vote. *Id.* at 2176



The Commission also proposes that current UTP/CTA Plan Advisory Committee members be allocated one-third of the vote, with fractional votes allocated as necessary to preserve that ratio.⁵⁹ Action would require an “augmented majority vote,” which requires a two-thirds majority by all voting member of the operating committee and a majority of SRO and exchange-group votes.⁶⁰

3. REVISED FUNCTIONS

In addition to setting fees, the new NMS Plan would collect fees on behalf of exchanges,⁶¹ oversee plan accounts and audits,⁶² collect performance metrics,⁶³ assess the performance of competing consolidators,⁶⁴ propose NMS Plan amendments, select a plan administrator,⁶⁵ allocate revenues among the SROs, and draft guidelines governing conflicts of interest, confidentiality, and other matters.⁶⁶

The January Proposal to direct the National Market System Plans to submit a new plan under Rule 608 did not include a specific set of questions to be addressed by commenters.

D. Redefine “Core” Data to Include Nearly All Exchange Data

The Commission proposes to introduce the concept of “Consolidated Market Data” as the umbrella term to cover all NMS Plan information, including “core data,” “regulatory data,” “administrative data,” “exchange-specific program data,” and additional regulatory, administrative or exchange-specific program data to be defined pursuant to an NMS Plan amendment.⁶⁷

1. CORE DATA

“Core data” will be comprised of: (1) quotation sizes; (2) aggregate quotation sizes; (3) best bid and best offer; (4) “national” best bid and national best offer; (5) protected bid and protected offer; (6) transaction reports; (7) last sale data; (8) odd-lot transaction data;⁶⁸ (9) depth of book data; and (10) auction information.⁶⁹ Two types of information currently distributed will be excluded from core data: (i) OTCBB quotation and transaction feeds for unlisted stocks, and (ii) “concurrent use” data relating to corporate bonds and indexes distributed by the CTA Plan.⁷⁰

⁶⁴ *Id* at 262; see also *Id* at 263 (“To aid the Commission’s monitoring, the Commission is requiring the effective national market system plan(s) for NMS stocks to provide assessments in key factors of competing consolidators, including: speed of the competing consolidators in receiving, calculating, and disseminating proposed consolidated market data; the reliability of the transmission of proposed consolidated market data; and a detailed cost analysis of the provision of proposed consolidated market data.”).

⁷⁰ *Id* at 46.

2. NATIONAL BEST BID AND OFFER

The National Best Bid and Offer (“NBBO”) is currently defined as the best bid and best offer for an NMS security that is calculated and disseminated on a current and continuous basis by the exclusive SIPs.⁷¹ The February Proposal substitutes⁷² this single NBBO in favor of localized NBBOs, defined as the best bid and best offer that is calculated and disseminated on a current and continuing basis by a competing consolidator or calculated by a self-aggregator.⁷³ The Commission does not estimate how many “NBBOs” might exist under the new regime, but expects approximately twelve competing consolidators,⁷⁴ which would be supplemented by NBBOs set by self-aggregators.

The Commission’s proposed changes would not apply to the options SIP.⁷⁵

3. ROUND LOTS

The Commission proposes to introduce a tiered definition of the term “round lot”⁷⁶ that varies by stock price.⁷⁷ The specific tiers, based on the stock’s average closing price on the primary listing exchange for the prior calendar month, are as follows:⁷⁸

Average Closing Price Prior Calendar Month Primary Listing Exchange	Round Lot Size
\$50.00 or less per share	100 shares
\$50.01 - \$100.00 per share	20 shares
\$100.01 - \$500.00 per share	10 shares
\$500.01 - \$1,000.00 per share	2 shares
\$1,000.00 or more per share	1 share

The following chart shows the number of NMS stocks in each tier based on September 2019 monthly average closing prices:⁷⁹

Stock Price Group	Number of Stocks in Stock Price Group	Percent of ADV, by Price Group	Percent of \$ADV, by Price Group
\$0.00 - \$50.00	7,188	75.02%	31.70%
\$50.01 - \$100.00	1,094	13.64%	21.06%
\$100.01 - \$500.00	575	11.20%	43.40%
\$500.01 - \$1,000.00	14	0.05%	0.64%
\$1,000.01 +	15	0.09%	3.19%

Notwithstanding the tiered definitions for round lots, the Commission proposes that quotations of less than 100 shares not be protected under Rule 611,⁸⁰ as discussed below.

⁷¹ *Id* at 97-98

⁷² *Id* at 98.

⁷³ *Id* at 98.

⁷⁴ *Id* at 542.

⁷⁵ *Id* at 98.

⁷⁶ *Id* at at 50

⁷⁷ *Id* at 50.

⁷⁸ *Id* at 65.

⁷⁹ *Id* at 66 (Table 1).

⁸⁰ *Id* at 48.

4. DEPTH OF BOOK DATA

The Commission proposes to include depth of book data—defined as aggregated quotes at each price between the best bid (and best offer) and the protected bid (and protected offer) (if different), as well as the five price levels above the protected offer and below the protected bid⁸¹—as core data. Depth of book data that is more than five price levels above the protected offer or below the protected bid would not be core data.⁸²

5. AUCTION INFORMATION

The Commission proposes to include auction information as core data.⁸³ Auctions are held at specified events that occur during the trading day when continuous trading is not occurring (the open, close, or to reopen a stock that has been halted).⁸⁴ Auction data provides information about the extent to which buy orders exceed sell orders (or vice-versa), a reference price based on an internal calculation, and the indicative price for the auction based on orders received at that time.⁸⁵ Information leading up to and during an auction, including opening, reopening, and closing auctions, and disseminated at certain time periods would be included as core data.⁸⁶

6. REGULATORY INFORMATION

The UTP and CTA plans currently collect, calculate, and disseminate regulatory information, including information required by the NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), information relating to regulatory halts and market-wide circuit breakers (“MWCBS”), and information regarding short sale circuit breakers pursuant to Rule 201.⁸⁷ The Commission proposes to codify the distribution of regulatory information by including information regarding the following topics as core data: Short Sale Circuit Breakers pursuant to Regulation SHO; price bands pursuant to the LULD Plan (to be calculated by the listing exchange, rather than the SIP like it is done today); regulatory halts and trading pauses; the official opening and closing prices of the primary listing exchange; the applicable round lot size;⁸⁸ and sub-penny execution and trade through exempt indicators.⁸⁹ This regulatory information may be changed through an NMS Plan amendment.⁹⁰

7. ADMINISTRATIVE DATA

Administrative data—administrative or technical messages that facilitate the efficient utilization of proposed consolidated market data,⁹¹ such as market center and issue symbol identifiers⁹²—will be included in the SIP feeds.⁹³

8. EXCHANGE-SPECIFIC PROGRAM DATA

Exchange-specific program data, such as information related to retail liquidity programs specified by the rules of an exchange and disseminated pursuant to an NMS Plan, may also be included in the SIP feeds.⁹⁴

9. OTHER INFORMATION

Information related to future programs may be added pursuant to an NMS Plan amendment filed with the Commission under Rule 608 of Regulation NMS.⁹⁵

The Commission asked the following questions on these topics, among others:

- What are commenters’ views on the proposed amendments to the definition of national best bid and national best offer?⁹⁶

⁹⁴ *Id.* at 151.

⁹⁵ *Id.* at 152.

⁹⁶ *Id.* at 99.

- [D]o commenters have any concerns about competing consolidators calculating independent NBBOs?⁹⁷
- Do commenters believe that the definition of NBBO would ensure the calculation of consistent NBBOs by competing consolidators?⁹⁸
- Would the proposed decentralized consolidation model result in more NBBOs than could be viewed today? If so, would this increase the complexity of our markets?⁹⁹
- Do you agree with the Commission’s analysis of the economic effects of expanding the content of core data?¹⁰⁰
- Do commenters believe that there is a need for a “national protected best bid or offer” analogous to the NBBO that would represent a snapshot of the single best protected bid and single best protected offer from among all the protected bids and offers of each SRO?¹⁰¹
- Should “protected bid,” as proposed to be amended, rather than the national best bid be used as the reference price for determining which short sales are required to be prevented under Rule 201? What would be the benefits and costs of each approach?¹⁰²
- Do commenters believe that the definition of NBBO should reflect the proposed round lot sizes or should it remain consistent with the 100-share protected quotation?¹⁰³
- Do commenters believe it would be costly for market participants to adjust procedures and systems to comply with Rule 611 and prevent trade throughs at the smaller round lot sizes?¹⁰⁴
- Should depth of book data be included in the proposed definition of core data?¹⁰⁵
- Would the proposed definition [of Round Lot] affect market complexity?¹⁰⁶
- For the twelve stocks that currently have a round lot defined as one share, how often would such securities not have a protected best bid (“PBB”) or protected best offer (“PBO”)?¹⁰⁷
- What would be the economic effects of the proposed changes to the PBBO?¹⁰⁸
- How would the proposed changes to the NBBO and protected quotes affect transaction costs incurred by various investor types – e.g., active institutional investors, passive institutional investors, and retail investors?¹⁰⁹
- How would the proposed changes to the NBBO and PBBO affect order routing decisions and the share of order flow captured by each exchange and off-exchange venue? Would some exchanges or other venues gain order flow while others lose order flow? What are the factors that could determine a gain or loss in

97 *Id* at 199.

98 *Id* at 221.

99 *Id* at 481.

100 *Id* at 401.

101 *Id* at 49.

102 *Id* at 86.

103 *Id* at 95.

104 *Id* at 96.

105 *Id* at 119.

106 *Id* at 80.

107 *Id* at 425.

108 *Id* at 425.

109 *Id* at 425.

order flow?¹¹⁰

- Would the change to the NBBO result in an increase in the proportion of time in which the market is locked or crossed? Why or why not?¹¹¹

E. Market Structure Implications

1. ODD-LOT/ROUND LOT SIZE

As discussed above, the proposed rule would redefine a round lot to include quotations in NMS stocks of less than 100 shares for stocks priced above \$50 per share. As proposed, the definition would assign different round lot sizes to individual NMS stocks depending upon their share prices. Relatedly, the proposed definition of core data would require that the NBBO and the proposed depth of book data include “odd-lots that, when aggregated, are equal to or greater than a round lot, and that such aggregation would occur across multiple prices and be disseminated at the least aggressive price of all such aggregated odd-lots.”¹¹²

The proposal describes the impact of its proposed round lot definition on other Regulation NMS rules.

For example, Rule 602(a),¹¹³ among other things, requires SROs to have procedures in place to collect and make available certain quotation information from their members and make available their best bid and offers to vendors. As a result of the proposal, SROs would be required to collect and make available quotations in the smaller round lot sizes depending on the price of the NMS stock.¹¹⁴ Meanwhile, pursuant to the proposal, Rule 602(b)¹¹⁵ would now require responsible broker-dealers to communicate to SROs their bids and offers in the proposed round lot sizes and be firm for such bids and offers.¹¹⁶

Rule 603(c)¹¹⁷ states that no SIP, broker or dealer may provide, in a context in which a trading or order routing decision can be implemented, a display of any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock, including the NBBO and consolidated sale information. With the proposed definition of round lot, a SIP, broker, or dealer would need to provide a consolidated display that reflects smaller-sized orders in higher-priced stocks.¹¹⁸

Rule 604(a)(1)¹¹⁹ requires a specialist or their equivalent to publish immediately a bid or offer reflecting the price and full size of each customer limit order they hold that is at a price which would improve the bid or offer of such specialist or equivalent in such security, and the full size of each customer limit order held by the specialist that is priced equal to the specialist's bid or offer, is priced equal to the NBBO, and represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer. Rule 604(a)(1) does not apply currently to customer limit orders that are odd-lots. Under the proposed definition of a round lot, a specialist or their equivalent would have to include customer limit orders in the new round lot sizes within its published bids and offers.¹²⁰

The proposal would also affect Rule 605,¹²¹ which governs the disclosure of order

¹¹⁰ *Id.* at at 426.

¹¹¹ *Id.* at at 427.

¹¹² *Id.* at at 407.

¹¹³ 17 C.F.R. § 242.602(a).

¹¹⁴ February Proposal at 71.

¹¹⁵ 17 C.F.R. § 242.602(b).

¹¹⁶ February Proposal at 72.

¹¹⁷ 17 C.F.R. § 242.603(c).

¹¹⁸ February Proposal at 73.

¹¹⁹ 17 C.F.R. § 242.604(a)(1).

¹²⁰ February Proposal at 74-75.

¹²¹ 17 C.F.R. § 242.605.

execution quality information. Any Rule 605 execution quality statistics that rely on the NBBO as a benchmark would be affected by the inclusion of round lots comprising smaller quotation sizes.¹²²

Rule 606,¹²³ which requires broker-dealers to provide disclosure of information regarding the handling of the broker-dealers' customers' orders, would also be affected by the proposed definition of round lot because of the effect on the definition of actionable indication of interest.

Rule 610(c)¹²⁴ prohibits trading centers from imposing fees to execute an order against a protected quotation or any other quotation that is an SRO's best bid or offer if the fees exceed certain limits. The fee limitation exists to ensure the fairness and accuracy of displayed quotations by establishing an outer limit on the cost of accessing such quotations. That assures order routers that displayed prices are, within a limited range, true prices. As a result of the proposal, those fee limitations would apply to quotes in the smaller round lot sizes because they would apply to quotations that are the best bid or offer of an SRO.¹²⁵

Rule 201 of Regulation SHO¹²⁶ requires that trading centers have written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. As a result of the proposed definition of round lot, the national best bid would include orders in the proposed round lot sizes.

The foregoing raises many important questions and concerns about the logic of the proposed change to the definition of a round lot, its implications, and any potential unintended consequences associated with it. The Commission solicits public comment on many of these issues, including the following:

- How will the new definition of a round lot impact the NBBO?
- To what extent with the addition of what is now odd-lot quotation data to core data benefit market participants and investors? Who would gain access to this information who does not already have access to it?
- Would inclusion of this information in core data have any negative or unintended consequences, including information overload, market complexity, or burdens on market participants?
- Is the methodology that the Commission employs appropriate for defining round lots, including its proposal to define round lot sizes by the prices of NMS stocks as well as its proposal to associate particular stock prices with particular round lot sizes?
- Should odd-lot quotes be aggregated into new round lot sizes at multiple price levels for the purposes of calculating and disseminating the NBBO, or should odd-lot aggregation occur only at a single price level?
- How would the proposal affect order flow among trading venues?
- How will it impact retail order flow internalization businesses and their ability to provide price improvement and meet execution quality metrics?
- What impact would the proposal have on exchanges' official closing prices or on

¹²² February Proposal at 76.

¹²³ 17 C.F.R. § 242.606.

¹²⁴ 17 C.F.R. § 242.610(c).

¹²⁵ February Proposal at 78.

¹²⁶ 17 C.F.R. § 242.201.

the practices of mutual funds or other investment companies in calculating net asset value or trading in portfolio securities?

2. ORDER PROTECTION RULE

The SEC's proposal is also significant in that it would partially repeal Rule 611¹²⁷ – the “Order Protection Rule” – which as the Commission notes, is one of the more controversial provisions of Regulation NMS.¹²⁸ Rule 611 requires trading centers to have policies and procedures in place that are reasonably designed to prevent trade throughs of “protected bids or protected offers” in NMS stocks, subject to certain exceptions. Rule 611 currently applies only to round lots. Assuming that the current definition of protected bid or protected offer was to remain unchanged, then the Commission's proposed definition of round lot would result in an expansion of Rule 611 by requiring the protection of quotations in the new smaller round lot sizes.¹²⁹

In the proposed rule, however, the Commission would not extend order protection to smaller-sized quotations of less than 100 shares. Instead, the Commission proposes to amend the definition of “protected bid or protected offer” in Rule 600(b)(61)¹³⁰ to require automated quotations that are the best bid or offer of a national securities exchange or national securities association to be “of at least 100 shares” in order to qualify as a protected bid or protected offer. Moreover, protected quotations would only include odd-lots at a single price that, when aggregated, are equal to or greater than 100 shares. This would modify the practices of many exchanges, which, pursuant to their rules, aggregate odd-lots across multiple price points into round lots for purposes of providing protected quotations to the SIPs.¹³¹

The Commission acknowledges that its proposal to limit protected orders to round lots of 100 shares, including aggregated odd lots at a single price level, or more would result in an increase in instances where the best bid or best offer and the NBBO would not be protected quotations.¹³²

Moreover, the Commission acknowledges that the proposal could widen the spread of the protected best bid and best offer. While the proposal would only allow odd-lot orders at a single price point to be aggregated together to form a protected quote, several exchanges currently aggregate odd-lot orders across different price levels into round lots. For such exchanges, the proposal would cause the protected quotes to widen because odd-lot shares at multiple price levels could no longer be aggregated together to create a protected quote. Additionally, the Commission notes that if stocks have periods of time when they do not have 100 aggregated shares at the same price point, then under the proposed amendments, they could have increased periods of time during which they might not have a protected quote.¹³³

Again, this proposal raises numerous questions for which the Commission requests comment. These questions include the following:

- What would be the economic effects of not having a protected best bid or protected best offer be for higher-priced stocks? Would investors pay higher transaction costs when trading in such stocks?
- Should Rule 611 be extended to orders in the proposed smaller round lot sizes

¹²⁷ 17 C.F.R. § 242.611.

¹²⁸ February Proposal at 88-89 (noting recommendations by the Equity Market Structure Advisory Committee to eliminate the Order Protection rule due to its high costs and complexity).

¹²⁹ *Id.* at 86-87.

¹³⁰ 17 C.F.R. § 242.600(b)(61).

¹³¹ February Proposal at 48 n.131.

¹³² *Id.* at 44 n.117.

¹³³ *Id.* at 408.

and, if so, would there be any negative or unintended consequences for market participants, such as increased complexity and compliance costs?

- Should the Commission maintain the applicability of Rule 611 to the small number of stocks that, pursuant to existing exchange rules, have round lot sizes other than 100 shares?
- In absence of Rule 611 to protect smaller-sized orders in higher-priced stocks, is the Commission correct that the best execution obligation, when combined with the greater transparency that the Commission proposes for such orders in such stocks, would be sufficient for market participants to engage with the liquidity represented by such orders to obtain the best execution for them?

3. LOCKED AND CROSSED MARKETS

To the extent that the Commission would not extend the scope of the Order Protection Rule to round lots comprising smaller-sized quotations in higher-priced NMS stocks, the proposal would also impact Rule 610(d). Rule 610(d) provides that exchanges must adopt and enforce rules that require its members to reasonably avoid displaying quotations that lock or cross any protected quotation in an NMS stock, and it prohibits exchange members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in any NMS stock, absent an applicable exception. That is, under the proposal, round-lot quotations of less than 100 shares of higher-priced stocks would not be subject to Rule 610(d) and they could be locked or crossed, unless they can be aggregated to 100 shares at a single price level.¹³⁴

With respect to this proposal, the Commission solicits public comments on questions that include the following:

- Will the proposed change to the NBBO result in an increase in the frequency of locked or crossed markets or the proportion of time in which markets are locked or crossed? If so, what would be the economic effects?
- Is the Commission correct that market forces and improvements in trading and order routing technology would be sufficient to mitigate the risk of excessive locking and crossing of quotations in the new round lot sizes? Would locked or crossed markets resolve efficient under these circumstances?

¹³⁴ *Id.* at 93.

4. BEST EXECUTION

The Commission states in its proposal that it intends for its proposed enhancements to core data to, among other things, facilitate best execution.¹³⁵ In particular, the Commission states its belief that market participants need depth of book data and auction information to fully participate in the markets and that the inclusion of this information in core data would facilitate best execution.¹³⁶ However, the Commission emphasizes that, through its proposal, it is not specifying minimum data elements needed to achieve best execution.¹³⁷ That is, it does not propose that broker-dealers must always use all proposed depth of book data or auction data, under all circumstances, to provide best execution to its customers. Instead, the Commission states its belief that the expanded set of proposed core data, provides additional information that in many circumstances would be useful to a broker-dealer's best execution analysis."¹³⁸

This is a summary of the proposed changes made by the SEC. Please note that the operation of other rules not specifically enumerated above may also be impacted by these changes. This impact would require further analysis on the other rules.

END OF DISCUSSION

