

MARKET DATA

Breaking Down the 898 Pages of the SEC New Market Data Rule

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On December 9, 2020, the U.S. Securities and Exchange Commission (“SEC”), in a move to modernize market data infrastructure, voted unanimously to adopt final rules related to the collection, consolidation, and dissemination of market data for exchange-listed national market system (“NMS”) stocks. The sweeping changes outlined in the final rule modify the method by which NMS securities market data is consolidated and disseminated, abandoning the current exclusive Securities Information Processor (“SIP”) model in favor of a competitive, decentralized consolidation model comprising competing consolidators and self-aggregators. The adopted amendments also expand the content of NMS market data. Principally by adding and refining elements of what constitutes “core” data. These amendments, which represent the most significant changes to the national market system since its implementation in the 1970s, aim to reduce the speed and quality gap between the more expensive proprietary data feeds available from exchanges and the top-of-book market data available via SIP feeds. At the heart of these changes is the SEC’s belief that the collection, consolidation, and dissemination of NMS market data has not kept up with industry-wide technological advancements and market developments and thus no longer satisfies the needs of market participants. However, Nasdaq Inc, the New York Stock Exchange and Cboe Global Markets have each sued the SEC in an attempt to block the SEC’s plans.

Transitioning from the Exclusive SIP Model

The new rule replaces the exclusive SIP model that features two securities SIPs – one for the Unlisted Trading Privileges Plan (“UTP”) and one for the Consolidated Tape Association (“CTA”) plan – with the forward-looking decentralized consolidation model. This new model consists of both competing SIPs, called competing consolidators (of which the SEC estimates there will be eight), and self-aggregators (i.e., brokers, dealers, SROs, and investment advisers registered with the Commission that elect to collect and consolidate market data solely for their internal use). The SEC hopes that allowing multiple vendors to compete with the current SIPs will incentivize greater innovation and competitive pricing within the national market system.

Decentralized Consolidation Model

The current centralized consolidation model takes a hub-and-spoke approach to data consolidation and dissemination. In this approach, the exclusive SIPs collect data for specific NMS stocks from

geographically separated self-regulatory organization (SRO) data centers, consolidate the data in one centralized data center, and then disseminate it from the SIP's location to end-users that are often in other locations. The decentralized consolidation model will no longer require SRO data to travel to a separate central location, but instead have competing consolidators directly collect NMS market data from the individual SROs before consolidating and disseminating this NMS market data within the same data center where the subscribers are located. The Commission believes the decentralized consolidation model offers a solution to the geographic latency that exists between the proprietary exchange data feeds and the current exclusive SIP data feeds. Moreover, the SEC maintains that the increased competition will incentivize consolidators to minimize latency and improve aggregation and transmission performance along with services for consolidated market data products. Thus, consolidators will compete based on the efficiency of their aggregation of raw SRO data in a manner similar to the way providers of proprietary data products compete today.

Registering as a Competing Consolidator: Form CC

Competing Consolidators must register electronically with the SEC pursuant to new Rule 614 of Regulation NMS on Form CC. Form CC governs the registration and responsibilities of the competing consolidators and contains questions pertaining to general and business information, fees and services details, and competing consolidator operational capabilities. The form is composed of six different types of submissions to the Commission. Ultimately, Form CC is designed to enable the Commission to determine whether a competing consolidator is in compliance with their duties and obligations. Consequently, amendments to Form CC must be made by competing consolidators annually to reflect changes not previously reported, as well as prior to implementing a material change, and upon ceasing operation as a competing consolidator. It is also mandatory for the majority of competing consolidators to file security related information on Form CC, such as information relating to systems disruptions and intrusions. The disclosures made in Form CC will be publicly available and therefore could be used by market participants to evaluate the services offered by competing consolidators.

Self-aggregators

Market participants that want to use NMS data at the rates set by the NMS plan(s) must either register as competing consolidators or use the NMS data internally as self-aggregators. Self-aggregators, some of whom currently purchase proprietary data from exchanges to calculate the NBBO (National Best Bid and Offer) for their own business needs, would be allowed to collect all the data content underlying NMS market data from the individual SROs and consolidate that information solely for their internal use. However, self-aggregators will be permitted to make NMS market data available to their affiliates that are also registered with the SEC. The SEC hopes the consolidation activities of self-aggregators will create more competitive pressure for competing consolidators. While self-aggregators must be registered entities subject to SEC oversight, they will not be required to register with the SEC in a separate capacity like competing consolidators via Form CC.

Competing Consolidator Obligations

Competing consolidators' main obligations as set out in Rule 614(d)(1) through (3) of Regulation NMS include:

- Collecting NMS market data information from the SROs and generating and disseminating a consolidated market data product with timestamped information to subscribers on terms that are not unreasonably discriminatory.
- Recordkeeping and retention obligations, including the requirement that each competing consolidator preserve at least one copy of all documents received in the course of its business for at least five years and promptly furnish them to the SEC upon request.
- Publishing monthly performance and operations metrics (e.g., capacity, network delays, and latency) prominently on their websites.
- Providing Systems Disruption and Systems Intrusion Notifications for any competing consolidator that is not a Regulation SCI competing consolidator (note: those competing consolidators that meet a market-share threshold will be subject to Regulation SCI, also called “SCI entities,” while those that do not meet the threshold will be held to a more limited set of similar obligations).

Competing consolidators will be required to develop and offer at least one consolidated market data product. However, the Commission does not require them to offer a product that contains all elements of consolidated market data, choosing instead to allow competing consolidators to compete on how they package and tailor their services and products to the needs of subscribers. Competing consolidators that choose to sell a consolidated market data product that includes the NBBO will generate their own NBBO based upon the data content received from the SROs. As a result, under the decentralized consolidation model there will be multiple competing consolidator generated NBBOs. The SEC believes that this will not cause additional confusion because there will be no change to the methodology by which the NBBO is calculated, and market participants already consider NBBOs from multiple sources.

Expanding Consolidated Market Data: Core Data

The SEC believes the current consolidated market data demands of market participants are no longer being effectively served by the SIPs. Many industry members are forced to purchase proprietary data feeds from individual exchanges, in addition to consolidated data from the SIPs, to create a complete and robust view of the market. Under the adopted rules, consolidated market data would expand to include additional information of significance to investors. Specifically, “core” data would expand to include the following:

1. *Five Levels of Depth-of-Book Data*: the “depth of book” includes the open limit orders to buy at a price below the highest bid or sell at a price above the lowest offer. This information is valuable to market participants as it shows the liquidity of a security beyond the top of the book. The new rules add depth of book data to the definition of core data, which will be required to be disseminated as part of the consolidated market data. Depth of book data will include aggregated quotes at each of five price levels outside the NBBO, but not outside each exchange best-bid-offer (“BBO”). The odd-lot aggregation determines each depth level.
2. *Round Lot*: the current “round lot” definition includes smaller-sized orders in larger-priced stocks. The rule expands the definition of round lot to include quotations based on a combination of the number shares and the prior month’s average closing price for the stock on

the stock’s primary listing exchange. However, most securities will continue to have a round lot of 100 shares (i.e., securities priced between \$0 and \$250 per share). Protected quotations will be included in new round lots.

| New Definition of “Round Lot” | |
|-------------------------------|------------------------------|
| Adopted Round Lot Tier | Adopted Round Lot Definition |
| \$0-\$250.00 | 100 Shares |
| \$250.01-\$1,000.00 | 40 Shares |
| \$1,000.01-\$10,000.00 | 10 Shares |
| \$10,000.01 or More | 1 Share |

3. *Odd-Lot*: under the current rules, only round lots are included within the current NMS consolidated market data. Under the new 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. The round lot and odd-lot changes will allow for more liquidity at or inside the NBBO to be displayed.
4. *Auction Data*: the SEC noted the increase in demand and relevance of auction price information to market participants by including “auction information” within the definition of core data. The expanded range of auction information includes certain data that is generated by an SRO leading up to and during an auction, such as the opening, re-opening, and closing auction transactions. The Commission believes that including this information will enhance transparency into market activity and reduce proprietary data costs for market participants to engage in the auctions.

Regulatory Data

The Regulation NMS Amendments additionally define the calculation and dissemination of certain regulatory data that market participants need in order to meet regulatory requirements. Under the current system, regulatory data includes information addressing extraordinary market volatility (e.g., Limit Up/Limit Down Plan), regulatory halts and market-wide circuit breakers, short-sale price tests pursuant to Rule 201 of Regulation SHO, and the official opening and closing prices of the primary listing exchange. The approved rule will include all current regulatory data plus a new indicator for applicable round lot sizes along with any additional regulatory data elements required to be collected or calculated pursuant to the effective national market system plan(s).

What’s Next

The adopted rules will be effective 60 days after publication in the Federal Register. However, because of the lawsuits by the major exchanges and the groundbreaking nature of the adopted rules, there is much uncertainty as to a final timeline and the precise way in which the order will be implemented. The Commission has developed a phased transition plan in which several events during the transition period will serve as public benchmarks and provide market participants with information as to the timing of implementation. During the various phases of this transition, firms that maintain accurate and

consistent information regarding the process will be much better positioned to make informed and efficient decisions.

| Transition Period and Compliance Dates | | | |
|---|--|--|---|
| Actions | Start Time | Duration | |
| Federal Register publication date | To be determined | | |
| Effective date | Federal Register publication date | 60 days | |
| Phase One | During the first phase of the transition period, the fees for data content underlying consolidated market data will be filed with the Commission, and competing consolidator (CC) infrastructure will be developed and tested. | Rule 614's effectiveness | 420-570 days |
| | Plan amendment to the effective national market system plan(s) required under Rule 614 | Rule 614's effectiveness | 150-300 days |
| | Initial Registration and Review Period. | Will commence on the date the Commission approves the amendments | 180 days |
| | Initial Registration Period for CCs | Will begin on the date that the plan amendments are approved by the Commission | 90 days (simultaneous with initial registration and review period) |
| | Development Period | Starting with the approval of the plan amendments | 180 days (simultaneous with initial registration and review period) |
| | Testing Period | Following the development period | 90 days |
| | Phase One Go-Live | Following the development and testing periods | |
| Phase Two | During the second phase of the transition period, the decentralized consolidation model will run in parallel to the existing exclusive SIP model, and then the exclusive sip model will then be retired. | | (unclear) Greater than 180 days |
| | Initial Parallel Operation Period | Following phase one go-live | 180 days |
| | Operating Committee recommendation to Commission: decommissioning exclusive SIPs | At the end of the initial parallel operation period | Within 90 days of the end of the initial parallel operation period |
| | Commission considers effective national market system plan amendment | After Operating Committee's recommendation | 90-300 days after publication of the NMS amendment |
| Phase Three | During the third phase of the transition period, additional CCs will be allowed to register, and the changes necessary to implement the new round lot sizes will be tested and implemented. | Following the cessation of the operation of the exclusive SIPs | On-going |
| | Registration of Additional CCs | Following the cessation of the operation of the exclusive SIPs | |
| | Round Lot Testing and Implementation | Following the cessation of the operation of the exclusive SIPs | 90 days |

If you have any questions regarding the matters covered in this summary, please contact Tom Etheridge (tom.etheridge@jandj.com.) or C. K. Okoro (c.k.okoro@jandj.com).