



July Regulatory and Policy Developments

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The following is a brief recap of some of the significant policy and regulatory developments taking place during the month of July that impact trading and market structure in the equities markets, including:

- US Court of Appeals Issues Decision on SEC Market Data Governance Order
- SEC Re-Proposes Amendments to Exemption from National Securities Association Membership
- US Court of Appeals Issues Decision on Challenge to IEX D-Limit Approval
- SEC Comments on Soft Dollar Guidance
- Jaime Lizárraga Sworn in as SEC Commissioner

US Court of Appeals Issues Decision on SEC Market Data Governance Order

On July 5, the United States Court of Appeals for the District of Columbia Circuit ruled on petitions for review related to an SEC order impacting the reform of the governance of the market data feeds. In particular, three provisions of the final, SEC-approved “CT Plan” were challenged by several exchanges: (1) the inclusion of representatives of non-SROs as voting members of the CT Plan’s operating committee; (2) the grouping of SROs based on corporate affiliation for voting; and (3) the requirement that the administrator of the CT Plan be “independent,” meaning independent of any SRO that sells equity market data products.

Significantly, the Court granted the petitions as to the first challenged provision related to non-SRO representation but denied the petitions as to the other provisions. [The Court’s decision can be found here.](#)



SEC Re-Proposes Amendments to Exemption from National Securities Association Membership

On July 29, the SEC re-proposed rule amendments that would narrow the exemption from Section 15(b)(8) of the Securities Exchange Act, which requires any broker or dealer registered with the SEC to become a member of a “national securities association” unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. Currently, FINRA is the only registered national securities association, and the rule amendments would potentially extend FINRA oversight to a number of broker-dealers. [The proposed rule can be found here.](#)

Currently, Exchange Act Rule 15b9-1 provides an exemption from Section 15(b)(8) to certain proprietary trading dealers that effect securities transactions other than on an exchange where they are members. The re-proposal would amend Rule 15b9-1 by replacing the proprietary trading exemption with more narrow exemptions from Section 15(b)(8). Under the re-proposal, an SEC registered broker or dealer would be required to join FINRA if it effects securities transactions other than on an exchange of which it is a member unless: (1) it is a member of a national securities exchange; (2) it carries no customer accounts; and (3) such transactions (i) result solely from orders that are routed by a national securities exchange of which the broker or dealer is a member to comply with Rule 611 of Regulation NMS or the “Options Order Protection” and “Locked/Crossed Market Plan;” or (ii) are solely for the purpose of executing the stock leg of a stock-option order.

US Court of Appeals Issues Decision on Challenge to IEX D-Limit Approval

On July 29, the United States Court of Appeals for the District of Columbia Circuit denied the petition filed by Citadel Securities challenging the SEC’s decision relating to the approval of IEX’s D-Limit.

Significantly, Citadel argued that the SEC lacked substantial evidence for one of its findings and that three of the SEC’s decisions were arbitrary and capricious. The Court found that substantial evidence supported the SEC’s findings and that the SEC’s conclusions were reasonable and reasonably explained, and therefore denied Citadel’s petition for review. [The Court decision can be found here.](#)



SEC Comments on Soft Dollar Guidance

On July 26, William Birdthistle, Director of the SEC's Division of Investment Management, provided remarks at PLI: Investment Management 2022, where he stated that the SEC does not plan to extend the current MiFID II relief for investment research. MiFID II essentially prevents asset managers in Europe from purchasing broker-dealer research with "soft dollars." SEC staff previously issued three no-action letters, including a no-action letter taking the temporary position that the staff would not consider a broker-dealer that accepted compensation through certain arrangements required by MiFID II to be an investment adviser during a temporary period specified in that letter.

The Director stated that, in light of developments in the marketplace for research services, the Division does not intend to extend the temporary position beyond its current expiration date in July 2023 and does not expect to issue further assurances with respect to the adviser status of broker-dealers accepting compensation under MiFID II arrangements. [The full speech can be found here.](#)

Jaime Lizárraga Sworn in as SEC Commissioner

On July 18, Jaime Lizárraga was sworn into office as SEC Commissioner. Commissioner Lizárraga was nominated by President Biden earlier this year and confirmed by the U.S. Senate on June 16. Jaime Lizárraga most recently served as Senior Advisor to Speaker of the House Nancy Pelosi. He replaces SEC Commissioner Allison Herren Lee, and his term expires on June 5, 2027. [The SEC press release can be found here.](#)