

Landmark Victory by Investors Rejects Two Market-Data Fees and Orders Reconsideration of Hundreds More

The Securities and Exchange Commission unanimously rejected NYSE and Nasdaq's argument that "proprietary" fees charged for exchange order data are constrained by market competition. The victory by the Securities Industry and Financial Markets Association, represented by partner Benjamin Beaton, is the latest in a string of SEC decisions imposing stricter oversight of the exchanges' "self-regulatory" functions and fees.

What You Should Know

Fees charged by exchanges for market data have shot up with little SEC oversight. The Securities and Exchange Act requires exchange fees to be "fair and reasonable." But from 2016 until last month, for example, the SEC had not rejected a single one of 95 connectivity fee increases. Given the limited scrutiny, the three largest exchanges' data-fee revenues have grown 55% in the past four years. For many firms, which had no choice but to buy this data, fees have risen even faster.

The exchanges failed to prove that market competition restrained fees. Previously, the SEC had accepted NYSE and Nasdaq's arguments that traders' ability to switch to other data products or trading venues constrained their ability to raise prices. The SEC, however, noted that the exchanges had been raising prices on the very customers said to have leverage over those fees. The opinion took care to state that it had not yet concluded the exchanges had monopoly power – only that the exchanges had not yet proved these fees were subject to competition.

Going forward, any new fees will need strong evidence and analysis. The ruling's biggest impact will be constraining future fee increases the exchanges would have rolled out. After years of accepting the exchanges' fee filings at face value, SEC Commissioners described those arguments as "conclusory," " cursory" and "oversimplified." The Commission made clear that far more will be required to justify further increases – whether through detailed market analysis, antitrust-style scrutiny, cost data or some combination.

More coverage of the SEC's decision and broader market developments can be found in *The Wall Street Journal* and the *Financial Times*. The SEC's [opinion](#) and [order](#) are available on its website, as well as statements from [Chairman Clayton](#) and [two Commissioners](#).

What Lies Ahead

- **This Month:** The SEC will host a public "[roundtable](#)" on market data and access on October 25-26. Major players from the investor, exchange and regulator communities will discuss the fee regime going forward. Expect the roundtable to cover many ideas about what should happen next – both in the market and through potential regulatory reform.
- **This Year:** The exchanges have already announced plans to challenge the SEC's ruling by appealing to the US Court of Appeals for the D.C. Circuit – which has already ruled twice during earlier phases of this fight.
- **Next Year:** The SEC ordered the exchanges to develop new procedures for considering more than 400 pending fees challenged by SIFMA and Bloomberg. The exchanges have six months to announce their procedures and six months to apply those procedures and the SEC's *SIFMA* ruling to the pending fees.

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