

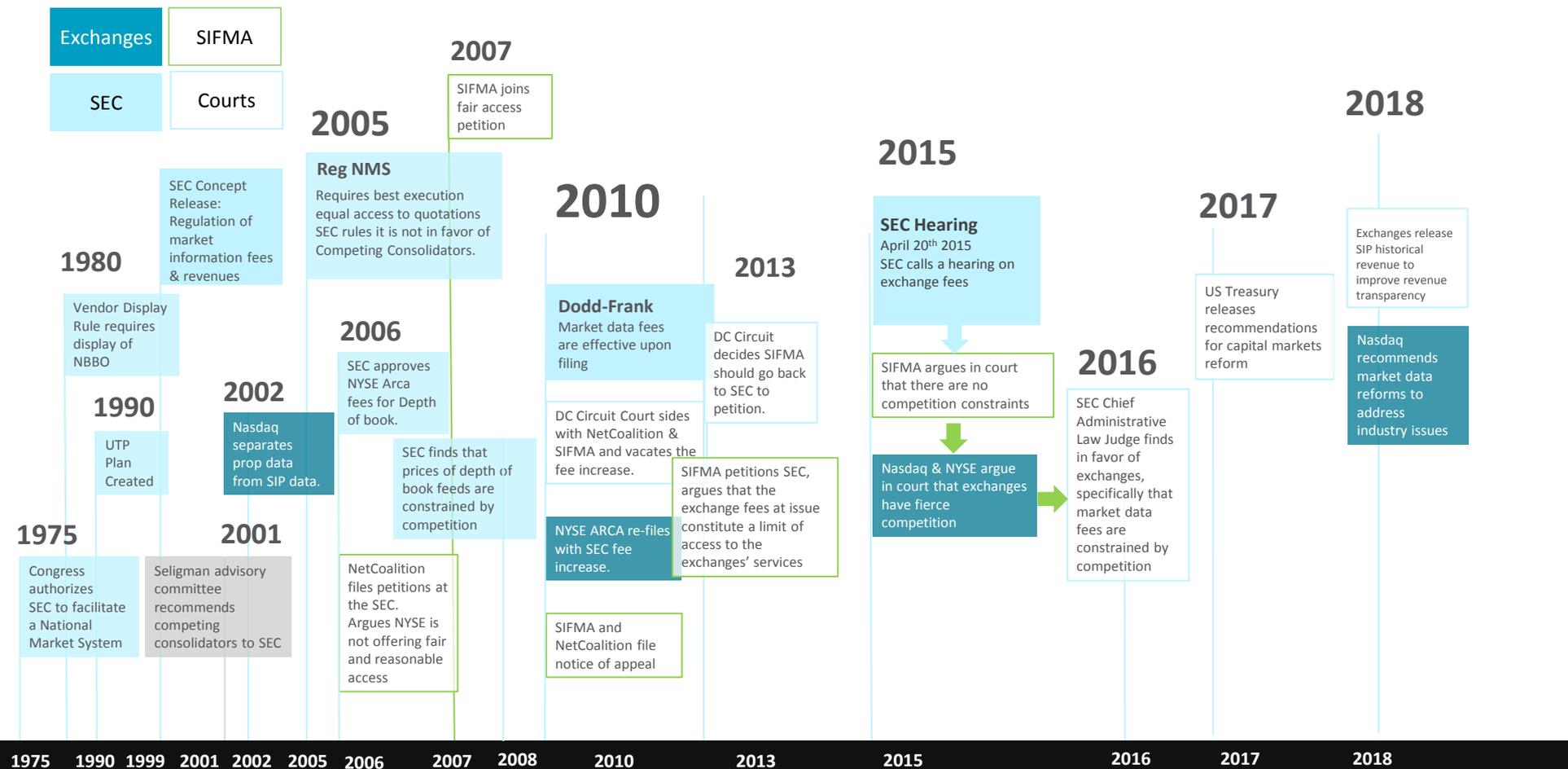


Investor Relations  
Supplementary Disclosure:

## Regulatory Developments

Oct 17, 2018

# Long history of debate/discussion/litigation likely to continue for some time



# SEC ruling on SIFMA case & related action

- **On October 16, 2018 the SEC rejected a 2016 decision by its own Chief Administrative Law Judge**, which had found that the price of depth of book data is constrained by competition. Instead, the SEC found that Nasdaq & NYSE had not met their burden of proof that the Level 2 distributor and ArcaBook fees, respectively at issue in the case, were fair and reasonable. The impact of the decision on Nasdaq is limited to prospective application of its Level 2 distributor fee, generating approximately \$1 million per year, and leaves in place all other fees.
- **The SEC did not set a new standard to review fee filings and did not adopt SIFMA's request for a cost-based pricing regime.** The SEC makes clear that it is “not finding that the market is not competitive.” Its focus was solely on the level of proof presented, which we of course dispute. Indeed, the Republican members of the SEC underscored in their statements that they did not intend today's decision to replace the SEC's market-based approach with cost-based ratemaking and they suggested approaches that might meet the exchanges' burden of proof.
- **Separately, the SEC asked the exchanges to create a process to consider 400 other rule filings that have been challenged by SIFMA and Bloomberg**, and to consider the impact of this decision on them. Of the 400 rule filings, approximately 130 relate to Nasdaq's markets, these challenged filings and the associated fees for Nasdaq's markets will remain in place during this process. After that process, there will be further review by the Commission. If appealed, this will be reviewed by a federal court.

# Nasdaq will vigorously challenge SEC's unfounded and arbitrary decisions

## Nasdaq's response:

- We intend to appeal the Commission's ruling to federal court.
- We may petition the SEC to rehear all or part of the decisions.
- We strongly believe that these decisions are contrary to the evidence and to the SEC's governing statute.
- The decisions seek to establish an unworkable and unnecessary regulatory regime in an already competitive market.
- We have confidence in the legal arguments of our appeal, and note that the SEC has been reversed by federal courts ten times in the last five years; ultimately the federal courts will decide on the SEC's unprecedented order.

# Initial implications and longer-term process

## **Immediate Impact:**

- Nasdaq is evaluating all of its appellate options for challenging the Commission's ruling.
- If the ruling is not overturned on appeal:
- SEC stated that NYSE/Nasdaq filings at the focus in SIFMA case didn't include sufficient justification for fee levels.
- Impact of fee changes in the Level 2 distributor fees, the data feed subject to the case, is ~\$1M annually
- The impact is not retroactive, prospective only

## **Potential longer term impact: SEC remanding 400 contested filings back to Exchanges and other SROs to review**

- Nasdaq is evaluating all of its appellate options for challenging the Commission's remand order.
- If the remand order is not overturned on appeal:
- Nasdaq develops procedures for evaluating each of the approximately 130 rule challenges remanded by the Commission.
- Nasdaq submits its procedures to the Commission within six months of the Commission's order.
- The Commission reviews Nasdaq's procedures.
- Nasdaq applies its procedures to each of the 130 rule challenges that SIFMA and/or Bloomberg decides to pursue.
- For each of these rule challenges, Nasdaq provides the other party with an opportunity to be heard, develops a record supporting the rule change, and, within a year of the Commission's order, issues a written decision explaining its basis for the rule change.
- For each written decision by Nasdaq affirming a rule change, the other party has the opportunity to pursue an appeal to the Commission.
- The Commission conducts a proceeding reviewing each of Nasdaq's written decisions and issues rulings affirming, reversing, or remanding each decision.
- The party that loses before the Commission has the opportunity to appeal each adverse ruling in federal court.
- The federal court affirms, reverses, or remands each of the Commission's rulings.

# Nasdaq's Guiding Principles

## For October 25-26 SEC Data Roundtable

### Nasdaq invited to speak on 5 of 7 panels

- We remain committed to a client-centric approach to innovating for the benefit of our clients, market participants and the broader investing public
- We are extremely supportive of the Roundtables as there is always room for improvement as we outlined in three reforms Nasdaq recently proposed
- The U.S. equity capital markets are the envy of the world with competition and innovation creating a world-class client experience and powering a vast array of investment products and services for the investing public
- Limited government and pro market solutions are best
- Competition, innovation and choice works
- Market data is highly regulated and very competitive

# Disclaimer

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

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