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October 19, 2016

The Honorable Mary Jo White
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act (File No. S7-21-16)*

Dear Chair White:

The Investment Company Institute (ICI)¹ urges the Securities and Exchange Commission (SEC or Commission) to replace the faulty governance model of national market system (NMS) plans as part of its review of Regulation NMS under the Regulatory Flexibility Act. We support the Commission reviewing, as a matter of policy, all of its final rules to assess their continued utility, and we strongly support Commissioner Piwowar's call for the Commission to examine the operation of Regulation NMS in the context of the substantial changes in technology, economic conditions, and other factors in the last decade.²

Regulation NMS needs improvement, and we suggest two specific changes. First, the Commission should address the outdated and unfair governance practices of NMS plans. The rules that authorize self-regulatory organizations (SROs) to prepare and file NMS plans have allowed SROs to administer key aspects of market structure without consulting—and often to the detriment of—other market participants. No legal authority requires SROs to monopolize NMS plan governance, and we believe that the NMS plan governing bodies would be far better informed—and less influenced by

¹ ICI is a leading global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's US fund members manage total assets of \$18.5 trillion and serve more than 90 million U.S. shareholders.

² This letter focuses on steps the Commission must take to improve Regulation NMS. The Commission's review of its rules under the Regulatory Flexibility Act, however, will consider other rules, including Rule 22c-2 under the Investment Company Act of 1940. We recommend retaining that rule.

conflicts of interest—if they included non-SROs.³ The proliferation of NMS plans in recent years as mechanisms to regulate the equity markets heightens these plan governance concerns.⁴ We urge the Commission to modify Regulation NMS to require all NMS plans to include as voting members a range of market participants, including representatives of registered funds.⁵

Second, the Commission should amend Regulation NMS to require complete transparency into any revenue generated by NMS plans, particularly those dealing with market data. Securities information processors (SIPs) are the exclusive SEC-approved providers of key market data, including information on national best bids and offers, last sales, and regulatory trading halts. Many market participants must use SIPs to trade, and SIPs charge fees that amount to hundreds of millions of dollars a year. SIPs do not, however, disclose publicly even rudimentary information concerning the allocation of this revenue among SROs or the amounts expended for SIP maintenance or improvement. At a minimum, the SEC should require disclosure of the amount of revenue generated, the sources of that revenue, the allocation of the revenue (including amounts invested in technology), and the amount and recipient of any revenue distributed to a plan participant. We also suggest that the SEC require SIPs to disclose more detail about their performance to enable market participants to assess the functioning of these critical market utilities.

We believe the Commission should review these important Regulation NMS issues this coming year. Given the Commission's limited resources, we urge the Commission to extend the charter of the SEC Equity Market Structure Advisory Committee (EMSAC) to assist with this effort. For nearly two years, EMSAC—a panel of industry experts—has examined US equity market structure, including NMS plan governance. Unfortunately, the EMSAC's two-year term expires in February 2017. To ensure that the Commission and its staff will continue to benefit from the expertise of this Committee, we urge the Commission to act promptly to extend the EMSAC's charter for another two-year term and to consider making the EMSAC a permanent advisory committee.

³ The transition of exchanges from member-owned entities to demutualized, for-profit corporations created incentives for SROs to operate NMS plans in a manner that potentially advantages their commercial interest at the expense of other market participants.

⁴ Recent examples of market structure matters that the Commission has addressed through NMS plans include the consolidated audit trail, the tick size pilot program, and measures to blunt extraordinary market volatility.

⁵ Although the Commission holds a public comment period before it adopts a new NMS plan, including non-SROs on plan operating committees would ensure that more diverse views are reflected in a plan's ongoing operations. The Commission also could improve NMS plan governance by requiring all NMS plans to publish minutes of operating committee meetings—including information about votes held—on a public website.

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We applaud the SEC for conducting a review to assess the continued utility of Commission rules. We strongly recommend that the Commission use this opportunity to improve Regulation NMS and to increase the fairness and transparency of US equity markets for funds and other investors. If you have any questions on our letter, please feel free to contact me at (202) 326-5901 or have your staff contact David Blass, General Counsel, at (202) 326-5815 or Jennifer Choi, Associate General Counsel, at (202) 326-5876.

Sincerely,

/s/ Paul Schott Stevens

Paul Schott Stevens

President & CEO

cc: The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Rick Fleming, Investor Advocate

Stephen Luparello, Director, Division of Trading and Markets