
On May 16, 2014, the Commission issued an Order Establishing Procedures and Referring Applications for Review to Administrative Law Judge for Additional Proceedings (Order). The Order referred to the administrative law judge applications filed on May 31, 2013, by the Securities Industry and Financial Markets Association (SIFMA), which challenge: (1) a 2010 ArcaBook fee rule set by NYSE Arca, Inc. (NYSE);¹ and (2) fee rules by The Nasdaq Stock Market LLC’s (NASDAQ) and affiliated exchanges’ depth-of-book data products. Order at 9, 21.

The referral calls for a determination on jurisdiction; if the Commission is found to have jurisdiction, the Commission directs:

¹ “NYSE Arca operates a fully-electronic exchange trading more than 8,000 exchange-listed securities, including listings on NYSE and Nasdaq. NYSE Arca utilizes competing Market Makers and delivers the benefits of both displayed and non-displayed liquidity with transparency and tremendous speed and efficiency.” Markets, NYSE Arca, available at https://beta.nyse.com/markets/nyse-arca (last visited June 27, 2014).
a hearing addressing whether the challenged rules should be vacated under the statutory standard set forth in Exchange Act Section 19(f) – as informed by the two-part test set out in our 2008 ArcaBook Approval Order, the D.C. Circuit’s decision in NetCoalition I, and appropriate briefing from the parties – and after such a hearing to issue an initial decision in this matter.

Order at 20 (internal footnotes omitted).

A telephonic prehearing conference was held on June 23, 2014, participated in by counsel for NYSE, SIFMA, and NASDAQ and NASDAQ OMX PHLX.

**Order**

The Commission may review SRO fee rules under Exchange Act Section 19(d) so long as the relevant statutory requirements are satisfied. Order at 10. To assist in making a determination on jurisdiction, the parties shall address the issue of whether members of SIFMA come within the meaning of a “person aggrieved” in accordance with Exchange Act Section 19(d)(2), using the following procedural schedule.

- July 28, 2014: Opening Brief by SIFMA;
- August 18, 2014: Briefs in opposition; and
- September 2, 2014: SIFMA’s Reply.

The briefs, excluding any declarations, affidavits, or attachments shall not exceed thirty-five pages in length.

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Brenda P. Murray  
Chief Administrative Law Judge