

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84664 / November 27, 2018

In the Matter of the Applications of
SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION

and

BLOOMBERG L.P.

For Review of Actions Taken by
Various National Securities Exchanges and
National Market System Plans in Their Role as
Registered Securities Information Processors

BRIEFING ORDER

On October 16, 2018, the Commission issued its decision in *Securities Industry and Financial Markets Association* (the “SIFMA Decision”).¹ In that proceeding, the Commission considered whether certain fees imposed by two national securities exchanges, NYSE Arca, Inc., and Nasdaq Stock Market LLC, were improper limitations or prohibitions of access to services offered by the exchanges. The Commission held that the fees at issue were improper limitations of access to exchange services because the exchanges failed to meet their burden of establishing that the fees at issue were consistent with the purposes of the Exchange Act and set them aside.

That same day, the Commission issued an order remanding certain additional challenges to exchange rule changes and National Market System (“NMS”) plan amendments brought by SIFMA and Bloomberg, L.P. (“Bloomberg”) to the respective exchanges and NMS plan participants for consideration of the impact of the SIFMA Decision on SIFMA’s and Bloomberg’s contentions that the challenged actions should be set aside.² The Commission also ordered the exchanges and plan participants to “develop or identify” procedures to assess the

¹ Exchange Act Release No. 84432, 2018 WL 5023228 (Oct. 16, 2018).

² *Sec. Indus. & Fin. Mkts. Ass’n*, Exchange Act Release No. 84433, 2018 WL 5023230 (Oct. 16, 2018) (attaching list of remanded proceedings as Exhibit A) (the “Remand Order”).

challenged actions,³ provide notice to the Commission of those procedures within six months,⁴ and apply them to the remanded challenges within one year.⁵

On October 24, 2018, Nasdaq Stock Market LLC and several related national securities exchanges (collectively, “Nasdaq”) filed a motion for reconsideration of the Remand Order. On October 29, 2018, New York Stock Exchange LLC and several related national securities exchanges (collectively, “NYSE”) filed an additional motion for reconsideration. A number of other exchanges and NMS plan participants have also filed motions for reconsideration.

On November 21, 2018, NYSE filed a motion to stay the Remand Order pursuant to Rule 401 of the Commission’s Rules of Practice pending consideration of NYSE’s reconsideration motion and an anticipated appeal of the Remand Order.⁶ NYSE stated that it “plan[s] to seek judicial relief from the [Remand] Order if the Commission does not grant the requested stay by the close of business on November 30, 2018.”

NYSE does not purport to state SIFMA’s or Bloomberg’s positions on the motion to stay, and neither party has responded to those motions. Rule 154(b) of the Commission’s Rules of Practice states that “[b]riefs in opposition to a motion shall be filed within five days after service of the motion.”⁷ Rule of Practice 160(a) provides that, in computing the due dates for oppositions to a motion to stay, “[i]ntermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail”⁸ Rule 160(b) provides that “[i]f service is made by mail, three days shall be added to the prescribed period for response” where, as here, there is no specified “date certain for filing.”⁹ NYSE’s certificate of

³ See *id.* at *1 (ordering exchanges to “develop or identify fair procedures for assessing the challenged rule changes as potential denials or limitations of access to services, as required under Exchange Act Section 6(b)(7),” and “direct[ing] the exchanges to footnotes 68-69 and 109 of the SIFMA Decision and accompanying text, which reference the exchanges’ legal obligation to provide notice and an opportunity to be heard to those involved, to develop a record, and to ‘explain their conclusions, based on that record, in a written decision that is sufficient to enable us to perform our review’”); *id.* at *2 (ordering “plan participants [to] develop or identify specific procedures and standards for assessing the challenged plan amendments as potential denials or limitations of access, as well as the method by which any disputes will be resolved, as required under Rule 608(a)(5) of Regulation NMS”).

⁴ *Id.* at *2.

⁵ *Id.*

⁶ Nasdaq, CBOE, and the Options Price Reporting Authority have filed joinders in NYSE’s motion.

⁷ 17 C.F.R. § 201.154(b).

⁸ 17 C.F.R. § 201.160(a).

⁹ 17 C.F.R. § 201.160(b).

service states that it served SIFMA and Bloomberg on November 20, 2018, “via electronic and/or U.S. Mail.” But the certificate of service identifies only mailing addresses for SIFMA and Bloomberg, so it appears they were served by mail. In any event, the Rules of Practice do not authorize service by electronic mail, and NYSE does not contend that SIFMA and Bloomberg have agreed to accept email service.¹⁰ Thus, under the Rules of Practice the deadline for SIFMA and Bloomberg to file opposition briefs is December 3, 2018.¹¹

In addition, Rule 154 provides that “[r]eply briefs shall be filed within three days after service of the opposition.” In determining the due date for any such reply brief, the time computation provisions of Rule 160 would also apply.

Accordingly, IT IS ORDERED that the parties may file any opposition and reply briefs relevant to NYSE’s motion within the deadlines provided by the Rules of Practice.¹²

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

¹⁰ See Rules of Practice 150, 151(d), 17 C.F.R. §§ 201.150, .151(d); *cf. David Mura*, Exchange Act Release No. 72080, 2014 WL 1744129, at *7 n.51 (May 2, 2014) (finding that “the record d[id] not establish that [respondent] ever agreed to accept [email] service from the law judge, and our rules do not currently provide for service by email”).

¹¹ See Rule of Practice 160(b), 17 C.F.R. § 201.160(b) (providing for extension of time for service by mail); Rule of Practice 160(a), 17 C.F.R. § 201.160(a) (providing that if “[t]he last day of the period so computed . . . is a Saturday, Sunday, or Federal legal holiday . . . , the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday”); *see also BDO China Dahua CPA Co.*, Exchange Act Release No. 72753, 2014 WL 3827605, at *1 n.2 (Aug. 4, 2014) (“In short, Rule 160(a) and Rule 160(b) work together as follows: (1) the underlying period is computed, excluding intermediate weekends and holidays if the period is seven days or less; (2) if service is by mail, then three additional calendar days are appended to that period; and (3) finally, if the resulting day itself falls on a weekend or holiday, the period runs until the next day that is not a weekend or holiday.”).

¹² This order is issued in each of the cases identified in Exhibit A hereto.

Exhibit A

Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15351 (May 31, 2013)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15364 (June 25, 2013)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15394 (July 29, 2013)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15600 (Oct. 31, 2013)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15773 (Mar. 5, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-15774 (Mar. 5, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16006 (Aug. 6, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16188 (Oct. 3, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16204 (Oct. 20, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16220 (Oct. 29, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16320 (Dec. 16, 2014)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16330 (Jan. 9, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16356 (Jan. 23, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16423 (Mar. 6, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16490 (Apr. 13, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16526 (May 7, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16574 (June 3, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16685 (July 10, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16724 (Aug. 5, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16793 (Sept. 3, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16834 (Sept. 28, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16918 (Oct. 23, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-16960 (Nov. 16, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17000 (Dec. 11, 2015)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17040 (Jan. 8, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17066 (Jan. 22, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17105 (Feb. 8, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17138 (Feb. 29, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17176 (Mar. 23, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17208 (Apr. 13, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17244 (May 9, 2016)

Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17331 (July 8, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17663 (Nov. 4, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17702 (Dec. 1, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17738 (Dec. 19, 2016)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17787 (Jan. 17, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17841 (Feb. 10, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-17877 (Mar. 13, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18002 (May 26, 2017)
Bloomberg, L.P., File No. 3-18010 (June 5, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18057 (June 30, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18094 (Aug. 1, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18144 (Aug. 29, 2017)
Bloomberg, L.P., File No. 3-18145 (Aug. 29, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18248 (Oct. 10, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18286 (Nov. 17, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18310 (Dec. 13, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18313 (Dec. 14, 2017)
Bloomberg, L.P., File No. 3-18315 (Dec. 14, 2017)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18345 (Jan. 19, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18362 (Feb. 6, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18365 (Feb. 9, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18383 (Feb. 28, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18441 (Apr. 19, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18525 (June 1, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18572 (July 5, 2018)
Sec. Indus. & Fin. Mkts. Ass'n, File No. 3-18680 (Aug. 24, 2018)