

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1564/June 27, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15350

In the Matter of the Application of

SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION

for Review of Actions Taken by
Self-Regulatory Organizations

ORDER FOLLOWING
PREHEARING CONFERENCE

Section 19 of the Securities Exchange Act of 1934 (Exchange Act) gives the Securities and Exchange Commission (Commission) oversight responsibilities over certain actions of self-regulatory organizations (SRO). See 15 U.S.C. § 78s(d), (f).

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.

Brenda P. Murray
Chief Administrative Law Judge