

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1716/August 20, 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 GRANTING MOTION
FOR PROTECTIVE ORDER

On May 16, 2014, the Securities and Exchange Commission (Commission) issued an Order Establishing Procedures and Referring Applications for Review to Administrative Law Judge for Additional Proceedings (Order). The Order referred to an administrative law judge applications filed by the Securities Industry and Financial Markets Association (SIFMA), which challenge a 2010 ArcaBook fee rule set by NYSE Arca, Inc. (NYSE) and fee rules set by The Nasdaq Stock Market LLC's (NASDAQ) and affiliated exchanges' depth-of-book data products. Order at 9, 19, 21-22.

A telephonic prehearing conference was held in this matter on June 23, 2014, participated in by counsel for NYSE, SIFMA, and NASDAQ and NASDAQ OMX PHLX. I ordered briefing from the parties on the issue whether the Commission has jurisdiction to hear SIFMA's applications. *SIFMA*, Admin. Proc. Rulings Release No. 1564, 2014 SEC LEXIS 2299 (June 27, 2014).

On August 19, 2014, NASDAQ filed its brief in response to SIFMA's opening brief on jurisdiction. Attached to that brief is Exhibit A, a declaration by Jeannie Merritt, a vice president of NASDAQ OMX (Declaration). Concurrently, NASDAQ filed a Motion for Protective Order Pursuant to Rule of Practice 322 to Seal Confidential Information Regarding Fees Paid by Financial Institutions for Market Data Products (Motion), requesting that confidential information contained in paragraph eleven of the Declaration be sealed. Both redacted and unredacted copies of the Declaration were provided to this Office. This Office has been informed by counsel for SIFMA that SIFMA does not oppose the Motion.

The standard governing a motion for a protective order under Commission Rule of Practice 322 is whether the harm resulting from disclosure would outweigh the benefits of

disclosure. 17 C.F.R. § 201.322(b). According to NASDAQ, paragraph eleven of the Declaration contains private financial information concerning fees paid to NASDAQ by nine financial institutions. NASDAQ argues that both it and the parties listed in paragraph eleven have a strong interest in maintaining the confidentiality of this information, and that there is no benefit to publicly disclosing such information to the public. I find that these contentions are warranted, and that the harm resulting from this disclosure would outweigh any benefits.

For the reasons stated, I GRANT the Motion. The redacted version of the Declaration will be part of the public record. The unredacted version of the Declaration will be kept under seal.

Brenda P. Murray
Chief Administrative Law Judge