

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2177/January 2, 2015

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

NOTICE ON ISSUANCE OF
MODIFIED SUBPOENAS

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. *Sec. Indus. & Fin. Mkts. Ass'n*, Securities Exchange Act of 1934 Release No. 72182, 2014 SEC LEXIS 1686. The hearing is scheduled to begin on April 20, 2015.

On December 5, 2014, the Securities Industry and Financial Markets Association (SIFMA) requested that I issue two subpoenas duces tecum (subpoenas) to NASDAQ Stock Market LLC (NASDAQ) and NYSE Arca, Inc. (NYSE Arca, collectively the Exchanges). Each subpoena has ten document requests. Prehearing conferences on December 18 and 30, 2014; an amended filing by SIFMA (revised subpoena) on December 22, 2014; and my order of December 19, 2014, *Sec. Indus. & Fin. Mkts. Ass'n*, Admin. Proc. Rulings Release No. 2156, 2014 SEC LEXIS 4872, failed to resolve the differences of opinion about the subpoenas.¹ To move the proceeding forward, I have issued the two subpoenas pursuant to 17 C.F.R. § 201.232(b) with modifications as described as follows.

¹ On December 23, 2014, SIFMA filed a request for modification (SIFMA Request) of my December 19 order as to request three. On December 29, 2014, the Exchanges filed a letter also seeking modification (Exchanges' Request) of my December 19 order as to requests one and two, and opposing the SIFMA Request. On that same day, this Office received the Exchanges' separately filed oppositions to SIFMA's revised subpoenas. Also on December 29, 2014, this Office received SIFMA's opposition to the Exchanges' Request. On December 23, 2014, the Commission issued an Order Denying Consolidation Motions, *Sec. Indus. & Fin. Mkts. Ass'n*, Securities Exchange Act of 1934 Release No. 73922, 2014 SEC LEXIS 5003.

NASDAQ

1. Documents sufficient to identify the total number of subscribers to Your TotalView, OpenView, and Level 2 depth-of-book products and any changes in the number of subscribers on a monthly basis from August 1, 2006 to the present.
2. All Documents sufficient to identify the fees paid by subscribers under the rule change in *Nasdaq Stock Market LLC*, Exchange Act Release No. 62907, File No. NASDAQ-2010-110 (Sept. 14, 2010), for Your TotalView, OpenView, and Level 2 depth-of-book data products on a monthly basis from August 1, 2006 to the present.
3. All Documents sufficient to identify Your market share of order flow and any changes in Your market share throughout the period from August 1, 2006 to the present, including without limitation, all Documents sufficient to prepare charts and graphs for Nasdaq equivalent to those contained at JA213-217 of the Joint Appendix to *NetCoalition v. SEC (NetCoalition II)*, No. 10-1421, (D.C. Cir. Mar. 7, 2012).
4. Existing non-public Documents provided to Your decision-makers, on setting fees under the rule change in *Nasdaq Stock Market LLC*, Exchange Act Release No. 62907, File No. NASDAQ-2010-110 (Sept. 14, 2010), for Your TotalView, OpenView, and Level 2 depth-of-book products challenged in this proceeding, sufficient to identify Your considerations and reasons for setting or maintaining the fees for those products, including Documents sufficient to identify: Your reasons for setting prices at a particular level; and/or the relationship between Your challenged depth-of-book data fees and Your order flow. NASDAQ need only provide the identities of those individuals who had decision-making authority on the rule change, their title, and responsibilities to SIFMA by January 16, 2015, and this document request will be limited to those individuals, and will not include e-mail searches. This document request will be returnable on February 9, 2015.
5. All marketing, promotion, and advertising materials You have used to promote Your depth-of-book data products from August 1, 2006 to the present, including without limitation any offers of free trial periods or other promotions for a limited time period. This document request will be returnable on February 9, 2015.
6. Documents ordinarily maintained as part of Your books and records that are sufficient to identify the costs of Your data collection and distribution infrastructure used to provide subscribers the depth-of-book data for Your TotalView, OpenView, and Level 2 products challenged in the above-captioned proceeding.
7. Documents ordinarily maintained as part of Your books and records that are sufficient to identify the profitability and revenue of Your TotalView, OpenView, and Level 2 depth-of-book data products challenged in the above-captioned proceeding.
8. Not Applicable.²

² SIFMA has withdrawn document request numbers eight and ten.

9. Documents ordinarily maintained by the individual (or individuals) primarily responsible for maintaining, creating, or tracking the information sought who are sufficiently knowledgeable to identify which products You have identified as competitive or substitute products for Your TotalView, OpenView, and Level 2 depth-of-book data products challenged in the above-captioned proceeding, as well as Your pricing strategy for competing against those competitive or substitute products. This document request will be returnable on February 9, 2015.
10. Not Applicable.

NYSE Arca

1. Documents sufficient to identify the total number of subscribers to Your ArcaBook depth-of-book product and any changes in the number of subscribers on a monthly basis from August 1, 2006 to the present.
2. All Documents sufficient to identify the fees paid by subscribers under the rule change in *NYSE Arca, Inc.*, Exchange Act Release No. 63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010), for Your ArcaBook depth-of-book product on a monthly basis from August 1, 2006 to the present.
3. All Documents sufficient to identify Your market share of order flow and any changes in Your market share throughout the period from August 1, 2006 to the present, including without limitation, all Documents sufficient to provide an update of the charts and graphs contained at JA213-217 of the Joint Appendix to *NetCoalition v. SEC (NetCoalition II)*, No. 10-1421, (D.C. Cir. Mar. 7, 2012).
4. Existing non-public Documents provided to Your decision-makers, on setting fees under the rule change in *NYSE Arca, Inc.*, Exchange Act Release No. 63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010), for Your ArcaBook depth-of-book product challenged in this proceeding, sufficient to identify Your considerations and reasons for setting or maintaining the fees for those products, including Documents sufficient to identify: Your reasons for setting prices at a particular level; and/or the relationship between Your challenged depth-of-book data fees and Your order flow. NYSE Arca need only provide the identities of those individuals who had decision-making authority on the rule change, including those with such authority from the market data group, their title, and responsibilities to SIFMA by January 16, 2015, and this document request will be limited to those individuals, and will not include e-mail searches. This document request will be returnable on February 9, 2015.
5. All marketing, promotion, and advertising materials You have used to promote Your depth-of-book data products from August 1, 2006 to the present, including without limitation any offers of free trial periods or other promotions for a limited time period. This document request will be returnable on February 9, 2015.
6. Documents ordinarily maintained as part of Your books and records that are sufficient to identify the costs of Your data collection and distribution infrastructure

used to provide subscribers the depth-of-book data for Your ArcaBook product challenged in the above-captioned proceeding.

7. Documents ordinarily maintained as part of Your books and records that are sufficient to identify the profitability and revenue of Your ArcaBook depth-of-book data product challenged in the above-captioned proceeding.
8. Not Applicable.
9. Documents ordinarily maintained by the individual (or individuals) primarily responsible for maintaining, creating, or tracking the information sought who are sufficiently knowledgeable to identify which products You have identified as competitive or substitute products for Your ArcaBook depth-of-book data products challenged in the above-captioned proceeding, as well as Your pricing strategy for competing against those competitive or substitute products. This document request will be returnable on February 9, 2015.
10. Not Applicable.

The Definitions and Instructions contained in SIFMA's original subpoenas shall apply, except as modified by this Order and by SIFMA's revised subpoena. Except where otherwise noted, the subpoenas are returnable on January 27, 2015.

Brenda P. Murray
Chief Administrative Law Judge