

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 2775/June 5, 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

ORDER ON CONSENT MOTION  
REGARDING EXHIBITS DEEMED IN  
EVIDENCE

This proceeding concerns applications filed by the Securities Industry and Financial Markets Association (SIFMA) challenging certain rules set by NYSE Arca, Inc. (NYSE Arca), and the Nasdaq Stock Market LLC (NASDAQ, collectively with NYSE Arca, the Exchanges).

A public hearing in this proceeding was held from April 20 to April 24, 2015.<sup>1</sup> On the final day of the hearing, I ordered the parties to confer and file a list of exhibits that they want admitted into evidence. Tr. 1402. On June 1, 2015, the parties filed their consent motion regarding exhibits deemed in evidence (Consent Motion). With a handful of exceptions, the parties agree that all exhibits listed in their consent motion should be admitted into evidence. The parties also agree on the confidentiality designation applying to each exhibit.

There are a few disagreements. SIFMA objects to NASDAQ exhibit 619, arguing that it is a summary exhibit but that NASDAQ did not make the underlying data available until after the exhibit was used, refused to disclose how the data was collected and sourced, and that the exhibit is misleading and incomplete. Consent Motion at 27 n.3. NASDAQ argues that SIFMA has received the underlying data and has not challenged the exhibit as invalid or inaccurate, as I instructed during the hearing. *Id.*; Tr. 1196-98. Having considered the arguments, I ADMIT NASDAQ exhibit 619. *See* 17 C.F.R. § 201.320. In its post-hearing brief, SIFMA may raise whatever argument it deems appropriate relating to the weight, if any, I should give this exhibit.

NYSE Arca also partially objects to several SIFMA exhibits. NYSE Arca argues that for SIFMA exhibits 104AA, 104FF, and 104JJ, only the “NYSE ArcaBook” column should be admitted into evidence. Consent Motion at 37-38 nn. 6, 8-9. This reflects the ruling I made at the hearing on a related exhibit, Tr. 144-47, and SIFMA has not opposed NYSE Arca’s objections. Accordingly, I ADMIT SIFMA exhibits 104AA, 104FF, and 104JJ only as to the

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<sup>1</sup> Citations to the hearing transcript are marked “Tr.”

NYSE ArcaBook columns in each exhibit. On similar grounds, NYSE Arca objects to SIFMA exhibit 104CC and argues that it should be replaced with SIFMA exhibit 104CC-2. *Id.* at 37 n. 7. Again, as SIFMA has not opposed this objection, and the objection reflects my ruling on a related exhibit, I DECLINE to admit SIFMA exhibit 104CC and will admit SIFMA exhibit 104CC-2 in its place.

At the hearing, I admitted into evidence, lines 9-15 and the identity of the speaker of SIFMA exhibit 371, “Transcript, SIFMA Compliance and Legal Society Annual Seminar, ‘Equity Trading and Institutional Sales Panel,’” (March 17, 2015). Tr. 244-45. The Exchanges object to the admission of these portions of SIFMA exhibit 371 on relevance grounds. Consent Motion at 53 n.10. While SIFMA has not offered an opposition to this objection, the grounds for relevance in administrative proceedings are quite broad. *See* 17 C.F.R. § 201.320; *City of Anaheim*, Exchange Act Release No. 42140, 1999 SEC LEXIS 2421, at \*4 (Nov. 16, 1999). Therefore, I DENY the Exchanges’ objection, and affirm my ruling admitting SIFMA exhibit 371 for lines 9-15 and the identity of the speaker.

### **Order**

I ADMIT all the exhibits listed in the Consent Motion Regarding Exhibits Deemed in Evidence filed by the parties on June 1, 2015, with the following modifications: SIFMA exhibits 104AA, 104FF, and 104JJ are only admitted as to the NYSE ArcaBook columns; and SIFMA exhibit 104CC is not admitted, and will be replaced by SIFMA exhibit 104CC-2. Every exhibit will be accorded the level of confidentiality agreed upon by the parties in the Consent Motion.

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Brenda P. Murray  
Chief Administrative Law Judge