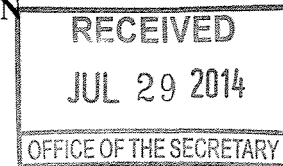


ORIGINAL

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION



In The Matter of the Application of:

SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION

for Review of Actions Taken by
Self-Regulatory Organizations

Admin. Proc. File No. 3-15350 15350

The Honorable Brenda P. Murray,
Chief Administrative Law Judge

**BRIEF OF APPLICANT SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION REGARDING SATISFACTION OF
JURISDICTIONAL REQUIREMENTS**

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Applicant Securities Industry and Financial Markets Association (“SIFMA”) respectfully submits this brief in response to the Order Following Prehearing Conference, Admin. Proc. Rulings Release No. 1564, File No. 3-15350 (June 27, 2014), which requested briefing “to assist in making a determination on [the Commission’s] jurisdiction” to consider SIFMA’s applications for review of actions taken by self-regulatory organizations (“SROs”) that limit access to market data made available by those SROs. In particular, the Order directed the parties to address “whether members of SIFMA come within the meaning of a ‘person aggrieved’” under Section 19(d)(2) of the Securities Exchange Act of 1934 (the “Exchange Act”). For the reasons set forth below, and as set forth in the declarations of representatives of SIFMA members attached hereto as Exhibits 1–9, identifiable members of SIFMA are “persons aggrieved” under Section 19(d)(2), and SIFMA has associational standing to proceed on their behalf.

BACKGROUND

At issue in this proceeding are rule changes unilaterally adopted by NYSE Arca, Inc. (“NYSE Arca”) and NASDAQ Stock Market LLC (“NASDAQ”) (collectively, the “Exchanges”) that impose fees for access to depth-of-book market data products. By the terms of these rule changes, any party who does not pay these fees—including SIFMA members and their customers—will be unable to access the market data made available by the Exchanges.

The Exchange Act and the Commission’s regulations impose limits on the fees that SROs like the Exchanges may charge for market data. An SRO must, among other things, “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,” 15 U.S.C § 78f(b)(4), and “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of” the Exchange Act, *id.* § 78f(b)(8). In addition, because each of the Exchanges is an “exclusive processor” of securities information, *id.* § 78c(a)(22)(B), the fees they charge for market data must be “fair and

reasonable” and “not unreasonably discriminatory,” *id.* § 78k-1(c)(1)(C)–(D); *see* 17 C.F.R. § 242.603(a) (same).

NetCoalition I. In May 2006, NYSE Arca filed a proposed rule change with the Commission seeking to impose fees for access to the depth-of-book data it makes available, which is provided to it by market participants and consolidated by the exchange, and which, like many other exchanges, it had previously made available for no cost. *See NetCoalition v. SEC (NetCoalition I)*, 615 F.3d 525, 531 (D.C. Cir. 2010). Under the law in effect at the time, the rule change could not take effect unless first approved by the Commission based on a finding that the rule change was consistent with the Exchange Act. *See id.* In an order dated December 9, 2008, the Commission approved the new fees despite NYSE Arca’s failure to provide any cost data supporting the fees, concluding instead that the fees were consistent with the Exchange Act because, notwithstanding NYSE Arca’s conceded status as an exclusive processor of its data, NYSE Arca was subject to “significant competitive forces” in setting the fees. *Id.* at 532; *see* Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data, 73 Fed. Reg. 74770 (Dec. 9, 2008).

On petition for review, the D.C. Circuit vacated the order because it “failed to disclose a reasoned basis for concluding that NYSE Arca [was] subject to significant competitive forces in pricing” its depth-of-book data product. *NetCoalition I*, 615 F.3d at 544 (internal quotation marks and citation omitted). In reaching this conclusion, the Court held that the Commission’s finding of competition was not supported by substantial evidence, *id.* at 528, and explained that the cost of producing market data is relevant to whether competition constrains the Exchanges’ fees because pricing that greatly exceeds costs “may be evidence of ‘monopoly,’ or ‘market,’ power,” *id.* at 537. NYSE Arca sought rehearing on the issue of whether the Court should have

allowed the rule to remain in effect pending proceedings on remand. *See* No. 09-1042, Dkt. No. 1266631 (Sept. 17, 2010). The Court denied the rehearing petition.

NetCoalition II. After this ruling, the Exchanges nonetheless filed a series of proposed rule changes imposing fees for various market data products. Two of these rule changes are at issue in this proceeding. First, NYSE Arca proposed a rule change that authorized fees that essentially were the same ones that had been vacated in *NetCoalition I*.¹ Second, NASDAQ proposed a rule change that modified distributor and direct access fees for depth-of-book data that NASDAQ makes available.² Both of these rule changes invoke the same purported economic justifications that the D.C. Circuit explicitly rejected in *NetCoalition I*, and neither is supported by any record evidence of the cost of producing the data in question.

Despite the Exchanges' failure to put forward any such evidence, the Exchanges took advantage of then-recent amendments to the Exchange Act to begin enforcing each of these rule changes immediately upon filing, without any further review by the Commission. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)—which was enacted while *NetCoalition I* was pending—the Exchanges were permitted to designate rule changes that established fees as immediately effective upon filing, *see* 15 U.S.C. § 78s(b)(3)(A), even though the Commission had not yet conducted the competition analysis the D.C. Circuit mandated on remand to determine whether competitive forces constrain the fees. The rule changes took effect subject to the Commission's summary authority to "temporarily suspend" the rule change within 60 days of each filing if such action was

¹ Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010), *available at* <http://www.sec.gov/rules/sro/nysearca/2010/34-63291.pdf> ("NYSE Arca Rule Change").

² Proposed Rule Change to Modify Rule 7019, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010), *available at* <http://www.sec.gov/rules/sro/nasdaq/2010/34-62907.pdf> ("NASDAQ Rule Change").

“necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act].” *Id.* § 78s(b)(3)(C). The Commission, however, did not exercise this authority as to any of the proposed rule changes.

SIFMA and NetCoalition petitioned the D.C. Circuit for review of the Commission’s refusal to suspend the rule changes. *NetCoalition v. SEC (NetCoalition II)*, 715 F.3d 342 (D.C. Cir. 2013). In its brief, the Commission argued that the court lacked authority to review the petitions because, *inter alia*, Section 19(b)(3)(C) of the Exchange Act withdraws the court’s jurisdiction to review the Commission’s failure to suspend a rule change that took effect upon filing. *See* Final Brief of Respondent Securities and Exchange Commission at 31–51, *NetCoalition II*, 715 F.3d 342 (D.C. Cir. 2013) (Nos. 10-1421, 10-1422, 11-1001, 11-1065) (“SEC Brief”). The Commission assured the court, however, that its interpretation of Section 19(b)(3)(C) would not leave the rule changes unreviewable by the courts. The Commission explained that Section 19(d)—which authorizes any “person aggrieved” to seek Commission review of an SRO action that “limits [that] person in respect to access to services offered by” the SRO, 15 U.S.C. § 78s(d)(1)–(2)—“provides a mechanism through which the consistency with applicable law of a rule that takes effect upon filing may be determined.” SEC Brief at 44. The Commission explained that “[j]udicial review of a Commission order in a [Section 19(d)] proceeding permits a court to consider directly whether a fee is consistent with the Act,” *id.* at 46, and specifically assured the Court that Section 19(d) permits review “[i]n this case,” *id.* at 45.

On April 30, 2013, the D.C. Circuit held that the Commission’s failure to suspend the rule changes was not reviewable under Section 19(b)(3)(C), as amended. *NetCoalition II*, 715 F.3d at 347. In reaching this conclusion, the court expressly relied upon the Commission’s representations regarding Section 19(d), explaining that “we take the Commission at its word . . .

that it will make the section 19(d) process available to parties seeking review of unreasonable fees charged for market data, thereby opening the gate to our review.” *Id.* at 353. The court also cautioned that the Dodd-Frank amendments did not render the decision in *NetCoalition I* “moot,” and that the *NetCoalition I* decision “remains a controlling statement of the law as to what sections 6 and 11A of the Exchange Act require of SRO fees.” *Id.* at 354.

SIFMA’s Section 19(d) Applications. Following the Commission’s guidance regarding the Section 19(d) process, SIFMA filed a series of applications requesting that the Commission set aside rule changes imposing fees for market data products that limit access by SIFMA’s members and their customers to market data in a manner inconsistent with the Act. SIFMA’s first two applications were filed on May 31, 2013, and were assigned Administrative Proceeding File Numbers 3-15350 and 3-15351. The application in the 3-15350 proceeding challenged the NYSE Arca Rule Change, and the application in the 3-15351 proceeding challenged nearly two dozen additional rule changes that various exchanges had filed for immediate effectiveness under the Dodd-Frank amendments, including the NASDAQ Rule Change.³

Order Establishing Procedures and Referring Applications for Review. On July 3, 2013, the Commission requested briefing by SIFMA and the Exchanges on certain preliminary matters in the 3-15350 and 3-15351 proceedings, namely (1) the primary issues to be decided in considering the applications, (2) the nature of the review standard, (3) whether it would be appropriate to consolidate the applications and/or to stay certain proceedings, (4) the extent to which further record development would be appropriate, and (5) other matters the parties deemed

³ A full list of the rule changes at issue in No. 3-15351 is available at Exhibit A to SIFMA’s application in that matter.

relevant.⁴ In response, the Exchanges argued, among other things, that SIFMA lacked standing to challenge the disputed fees because it was not a “person aggrieved” within the meaning of Section 19(d)⁵—despite conceding that SIFMA members have had to pay the challenged fees in order to access the relevant market data products. *See* NYSE Br. 3 (“SIFMA members do purchase market data products from the NYSE Entities”); NASDAQ Br. 3 (“[A] majority of SIFMA’s members currently subscribe to [the challenged] products”).

On May 16, 2014, the Commission issued an order that, among other things, rejected the Exchanges’ argument that SIFMA could not be a “person aggrieved” under Section 19(d).⁶ As the Commission explained, an association like SIFMA can proceed as a “person aggrieved” under Section 19(d) to seek a remedy for injuries suffered by its members, so long as it satisfies certain threshold requirements. May 16 Order 10–16. The Commission held that SIFMA already satisfied all but one of these requirements in its challenges to the NYSE Arca and NASDAQ Rule Changes, but that SIFMA would need to submit additional evidence to establish that it has met the final requirement—namely, “that its members are subject to an actual limitation of access.” *Id.* at 14. The Commission explained that this evidence could take the form of “member declarations . . . establishing that particular SIFMA members purchase the depth-of-book products and explaining that those members are aggrieved because the level of the prices charged

⁴ *See* Order Regarding Procedures to be Adopted in Proceedings, Admin. Proc. File Nos. 3-15350 & 3-15351 (July 3, 2013).

⁵ *See* Response of New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC to the Commission’s Order Regarding Preliminary Matters, Admin. Proc. File Nos. 3-15350 & 3-15351 (Aug. 30, 2013) (“NYSE Br.”); Brief of the NASDAQ Stock Market LLC; NASDAQ OMX PHLX; and EDGX Exchange, Inc. in Response to the Commission’s Order Regarding Procedures to be Adopted in Proceedings, Admin. Proc. File No. 3-15351 (Aug. 30, 2013) (“NASDAQ Br.”).

⁶ Order Establishing Procedures and Referring Applications for Review to Administrative Law Judge for Additional Proceedings, Exchange Act Release No. 34-72182, Admin. Proc. File Nos. 3-15350 & 3-15351 (May 16, 2014) (“May 16 Order”).

for those products is so high as to be outside a reasonable range of fees under the Exchange Act.” *Id.* The Commission directed that an administrative law judge should receive this evidence in the first instance. *Id.*⁷

ARGUMENT

Under the test set forth in the Commission’s May 16 Order, SIFMA plainly has associational standing to challenge the NYSE Arca and NASDAQ Rule Changes in a Section 19(d) proceeding as a “person aggrieved” by those actions. As the Commission explained, SIFMA may proceed as a “person aggrieved” under Section 19(d) so long as it satisfies the familiar three-part test that federal courts use to assess whether an entity has associational standing, under which ““an association has standing to bring suit on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”” May 16 Order 11 (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)); *see also NetCoalition II*, 715 F.3d at 347–48 (holding that SIFMA had associational standing because, “[o]n behalf of [its] members, [it] assert[ed] a financial injury allegedly caused by the SEC’s inaction which could be remediated if the SEC were to suspend the fee rules”).

The Commission has already held that SIFMA satisfies two of these factors: It has determined that “SIFMA seeks to protect interests that are germane to its purpose” and that “neither SIFMA’s claim that the fees at issue are inconsistent with the Exchange Act, nor its

⁷ In addition, the Commission issued a number of procedural rulings. Among other things, it severed the challenge to the NASDAQ Rule Change from the 3-15351 proceeding; consolidated the challenge with the 3-15350 proceeding; referred the 3-15350 proceeding to an administrative law judge; and stayed proceedings in what remained of the 3-15351 proceeding and other applications filed subsequently by SIFMA challenging additional rule changes. May 16 Order 19–22.

request that [the Commission] set those fees aside requires the participation of individual SIFMA members in the Proceedings.” May 16 Order 12. Accordingly, further consideration of these factors is unnecessary in this proceeding.

With respect to the third factor, the Commission has explained that SIFMA need only establish that it “represents identified members who are themselves persons aggrieved within the meaning of Section 19(d)(2).” *Id.* In explaining what this showing entails, the Commission rejected the Exchanges’ argument that SIFMA must establish that the challenged fees are “‘prohibitively expensive for a significant segment of market data consumers’” or that they “‘actually preven[t] [SIFMA members] from accessing’ the services at issue.” *Id.* (emphasis in original). Instead, the Commission agreed with SIFMA that “there is no need to establish a complete prohibition of access,” and that SIFMA need only establish that it has members that are “subject to an SRO action that actually *limits* [their] access to SRO services.” *Id.* at 13 (emphasis in original). An applicant challenging fees for market data can establish that the fee constitutes a limitation that is subject to challenge under Section 19(d) if three conditions are satisfied. *Id.* at 14–15. Here, all three conditions clearly are met.

First, an applicant must “assert a basis that, if established, would lead the Commission to conclude that the fee violates Exchange Act Section 19(f).” *Id.* at 14. The Commission already has held that SIFMA satisfied this condition, explaining that “SIFMA plainly has alleged a basis in its Applications to conclude that the depth-of-book fees it challenges are contrary to the Exchange Act.” *Id.* at 15. Accordingly, further consideration of this factor is unnecessary.

Second, the limitation must pertain to “‘the applicant’s ability to utilize one of the fundamentally important services offered by the SRO,’ which ‘[are] not merely important to the applicant but [are] central to the function of the SRO.’” *Id.* (quoting *Morgan Stanley & Co.*,

Exchange Act Release No. 39459, 53 SEC 379, 1997 WL 8002072, at *3 (Dec. 17, 1997)). With respect to the depth-of-book data fees at issue here, the Commission held that SIFMA has satisfied this condition, explaining that the Commission has previously found depth-of-book data services to be within the scope of Section 19(d), *see In re Bloomberg*, Exchange Act Release No. 34-49076, 2004 WL 67566, at *3 (Jan. 14, 2004), and “ArcaBook and NASDAQ’s depth-of-book products are also sufficiently important to” qualify as fundamentally important services, May 16 Order 16. Thus, as with the first factor, there is no need for further consideration in this proceeding.

Third, an associational applicant like SIFMA must “establish that its members are subject to an actual limitation of access.” *Id.* at 14. Although the record at the time of the May 16 Order was insufficient for the Commission to determine whether SIFMA had satisfied this condition, the Commission explained that SIFMA could make the requisite showing—and thereby establish its associational standing—by submitting to the administrative law judge either:

1. “[M]ember declarations, or other comparable evidence, establishing that particular SIFMA members purchase the depth-of-book products and explaining that those members are aggrieved because the level of the prices charged for those products is so high as to be outside a reasonable range of fees under the Exchange Act”; or
2. “[D]eclarations from its members showing that they were unable to purchase depth-of-book products due to alleged supracompetitive pricing violating the Exchange Act.” *Id.*

SIFMA now has satisfied this requirement by submitting, together with this brief, declarations from particular SIFMA members which conclusively establish that (1) at least nine identifiable members of SIFMA pay the fees authorized by the NYSE Arca and NASDAQ Rule Changes to access, use, and distribute the Exchanges’ depth-of-book market data products; (2) each of these members expects to continue paying these fees in the future; (3) each of these members is aggrieved because it has no way to access these products other than to pay fees that it

believes are not fair and reasonable under the Exchange Act as set forth in SIFMA's Section 19(d) applications; and (4) an order setting aside the fees as inconsistent with the Exchange Act would redress the injuries by which each of these members is aggrieved.⁸

These declarations provide the evidence that the Commission called for in its May 16 Order. At the time of the May 16 Order, the only evidence in the record was a declaration by SIFMA's general counsel identifying individual members that paid the fees authorized by the NYSE Arca Rule Change. The Commission found this evidence lacking because (1) it provided no such information with respect to any of the rule changes challenged in the 3-15351 proceeding, even though one of those rule changes—*i.e.*, the NASDAQ Rule Change—was being consolidated with the 3-15350 proceeding; and (2) the information was not presented in the form of declarations by SIFMA's members. May 16 Order 14. The attached declarations address these concerns because (1) they provide evidence regarding every rule change at issue in this proceeding, and (2) the declarations are from the members themselves.

Because these declarations satisfy the only jurisdictional condition that the Commission left open for resolution in this hearing, the evidence supports a finding that identifiable members of SIFMA are "persons aggrieved" under Section 19(d)(2), and that SIFMA has associational standing to proceed on their behalf.

⁸ Representatives of the following members have submitted declarations attesting to these facts: Bank of America, *see* Declaration of Michele Surdez of Bank of America (Ex. 1); Bloomberg L.P., *see* Declaration of David Levine of Bloomberg L.P. (Ex. 2); Citigroup Global Markets Inc., *see* Declaration of Young Kang of Citigroup Global Markets Inc (Ex. 3).; Credit Suisse Securities (USA) LLC, *see* Declaration of Lila Gordem of Credit Suisse Securities (USA) LLC (Ex. 4); Goldman, Sachs & Co., *see* Declaration of Elizabeth R. Pritchard of Goldman, Sachs & Co. (Ex. 5); JP Morgan Chase & Co., *see* Declaration of Gordon J Taylor of JP Morgan Chase & Co. (Ex. 6); Liquidnet, Inc., *see* Declaration of Howard Meyerson of Liquidnet, Inc. (Ex. 7); Charles Schwab & Co., Inc., *see* Declaration of Ed Obuchowski of Charles Schwab & Co., Inc. (Ex. 8); Wells Fargo and Company, *see* Declaration of Steven Listhaus of Wells Fargo and Company (Ex. 9).

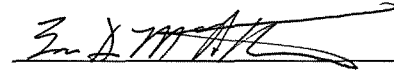
CONCLUSION

For the foregoing reasons, SIFMA has associational standing to proceed on behalf of its members who are “persons aggrieved” under Section 19(d)(2) of the Exchange Act.

Dated: July 28, 2014

Respectfully submitted,

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Dated: July 28, 2014

A handwritten signature in black ink, appearing to read "E. D. McArthur", written over a horizontal line.

Eric D. McArthur

Exhibit 1

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF MICHELE SURDEZ OF BANK OF AMERICA
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Michele Surdez, do declare as follows:

1. I am the Head of Market Data Business Support for Bank of America. In my role as Senior Vice President for Bank of America, I am responsible for Market Data Inventory, Provisioning, Procurement, and Invoice Reconciliation/Payment. My job responsibilities give me first-hand knowledge of the market data products that Bank of America obtains and the importance of those products to the operation of Bank of America's business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Bank of America about these market data products.

2. Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses, middle-market businesses, and large corporations with a full range of banking, investing, asset management, and other financial and risk management products and services.

3. Bank of America is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Bank of America has been a member of SIFMA since the association was formed on November 1, 2006.

4. Bank of America understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Bank of America has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NYSE Arca.¹ Bank of America paid these fees as recently as June 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Bank of America has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NASDAQ. Bank of America paid these fees as recently as June 2014, and expects to continue paying the fees for NASDAQ’s depth-of-book data in the future.

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

7. The fees described above limit Bank of America's access to NYSE Arca's and NASDAQ's depth-of-book data because, if Bank of America were to cease paying these fees, it would no longer be able to access, use, and distribute the data to its employees.

8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Bank of America suffers pecuniary harm by having to pay these fees in order to access, use, and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Bank of America is aggrieved by the challenged fees because they cause Bank of America to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Bank of America is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934 .

10. Bank of America currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

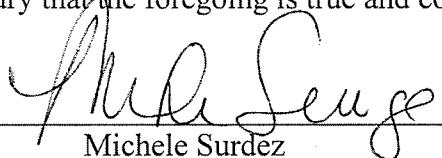
Dated: July 21, 2014 
Michele Surdez

Exhibit 2

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

**DECLARATION OF DAVID LEVINE OF BLOOMBERG L.P. IN SUPPORT OF
STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION**

I, David Levine, do declare as follows:

1. I am the General Counsel for Bloomberg L.P. In my role as General Counsel for Bloomberg L.P., I am responsible for Bloomberg's agreements to distribute market data products. I have substantial first-hand knowledge of the market data products that Bloomberg L.P. and certain direct or indirect subsidiaries (including Bloomberg Finance L.P., hereinafter collectively referred to as "Bloomberg") obtain and the importance of those products to the operation of Bloomberg's business. I also have additional knowledge of such market data products because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Bloomberg about these market data products.

2. Bloomberg is a leading market data vendor that distributes data from securities exchanges and other sources to clients worldwide through a variety of products and services, including the BLOOMBERG PROFESSIONAL service.

3. Bloomberg L.P. is currently an associate member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Bloomberg L.P. has been a member of SIFMA since 2010.

4. Bloomberg understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Bloomberg Finance L.P. has paid monthly fees since at least September 2010 in order to continue accessing and distributing depth-of-book data made available by NYSE Arca.¹ Bloomberg Finance L.P. paid these fees as recently as March 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Bloomberg Finance L.P. has paid monthly fees since at least September 2010 in order to continue accessing and distributing depth-of-book data made available by NASDAQ. Bloomberg Finance L.P. paid these fees as recently

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

as May 2014, and expects to continue paying the fees for NASDAQ's depth-of-book data in the future.

7. The fees described above limit Bloomberg's access to NYSE Arca's and NASDAQ's depth-of-book data because, if Bloomberg were to cease paying these fees, it would no longer be able to access and distribute the data to its clients.

8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Bloomberg suffers pecuniary harm by having to pay these fees in order to access and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Bloomberg is aggrieved by the challenged fees because they cause Bloomberg to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Bloomberg is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934.

10. Bloomberg currently suffers these harms and will continue to do so in the future.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: 28 JULY 2014

David Levine
David Levine

Exhibit 3

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF YOUNG KANG OF CITIGROUP GLOBAL MARKETS INC.
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Young Kang, do declare as follows:

1. I am a Managing Director for Citigroup Global Markets Inc. In my role as Global Head of Electronic Products, I am responsible for equities electronic products globally. My job responsibilities give me first-hand knowledge of the market data products that Citigroup Global Markets Inc. obtains and the importance of those products to the operation of Citigroup Global Markets Inc.'s business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Citigroup Global Markets Inc. about these market data products.
2. Citigroup Global Markets Inc. is a broker dealer in the financial services business.

3. Citigroup Global Markets Inc. is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Citigroup Global Markets Inc. has been a member of SIFMA since the association was formed on November 1, 2006.
4. Citigroup Global Markets Inc. understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).
5. Pursuant to the NYSE Arca Rule Change, Citigroup Global Markets Inc. has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NYSE Arca.¹ Citigroup Global Markets Inc. paid these fees as recently as June 30, 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.
6. Pursuant to the NASDAQ Rule Change, Citigroup Global Markets Inc. has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NASDAQ. Citigroup Global

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

Markets Inc. paid these fees as recently as July 7, 2014, and expects to continue paying the fees for NASDAQ's depth-of-book data in the future.

7. The fees described above limit Citigroup Global Markets Inc.'s access to NYSE Arca's and NASDAQ's depth-of-book data because, if Citigroup Global Markets Inc. were to cease paying these fees, it would no longer be able to access, use, and distribute the data to its employees.
8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Citigroup Global Markets Inc. suffers pecuniary harm by having to pay these fees in order to access, use, and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Citigroup Global Markets Inc. is aggrieved by the challenged fees because they cause Citigroup Global Markets Inc. to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.
9. Further, as set forth in the applications, Citigroup Global Markets Inc. is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934 .
10. Citigroup Global Markets Inc. currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

7/21/14


Young Kang

Exhibit 4

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF LILA GORDEM OF CREDIT SUISSE SECURITIES (USA) LLC
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Lila Gordem, do declare as follows:

1. I am the Market Data Strategic Sourcer for Credit Suisse Securities (USA) LLC

In my role as Market Data Strategic Sourcer for Credit Suisse Securities (USA) LLC, I am responsible for the sourcing and vendor management for seven of the 16 top tier market data strategic suppliers. My job responsibilities give me first-hand knowledge of the market data products that Credit Suisse Securities (USA) LLC obtains and the importance of those products to the operation of Credit Suisse Securities (USA) LLC's business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Credit Suisse Securities (USA) LLC about these market data products.

2. Credit Suisse Securities (USA) LLC is a leading global financial services company, offering clients financial advice in all aspects of investment banking, private banking and asset management.

3. Credit Suisse Securities (USA) LLC is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Credit Suisse Securities (USA) LLC has been a member of SIFMA since the association was formed on November 1, 2006.

4. Credit Suisse Securities (USA) LLC understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Credit Suisse Securities (USA) LLC has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NYSE Arca.¹ Credit Suisse Securities (USA) LLC paid these fees as recently as April 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Credit Suisse Securities (USA) LLC has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NASDAQ. Credit Suisse Securities (USA)

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

LLC paid these fees as recently as April 2014, and expects to continue paying the fees for NASDAQ's depth-of-book data in the future.

7. The fees described above limit Credit Suisse Securities (USA) LLC's access to NYSE Arca's and NASDAQ's depth-of-book data because, if Credit Suisse Securities (USA) LLC were to cease paying these fees, it would no longer be able to access, use, and distribute the data to its employees.

8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Credit Suisse Securities (USA) LLC suffers pecuniary harm by having to pay these fees in order to access, use, and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Credit Suisse Securities (USA) LLC is aggrieved by the challenged fees because they cause Credit Suisse Securities (USA) LLC to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Credit Suisse Securities (USA) LLC is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934.

10. Credit Suisse Securities (USA) LLC currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/23/14



LILA GORDEM

Exhibit 5

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF ELIZABETH R. PRITCHARD OF GOLDMAN, SACHS & CO.
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Elizabeth R. Pritchard, do declare as follows:

1. I am a Managing Director of Goldman, Sachs & Co. I am responsible for managing the Trading Market Data group within the Technology Division. My job responsibilities give me first-hand knowledge of the market data products that Goldman, Sachs & Co. obtains and the importance of those products to the operation of Goldman, Sachs & Co.'s business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Goldman, Sachs & Co. about these market data products.

2. Goldman, Sachs & Co., a limited partnership registered as a U.S. broker-dealer and futures commission merchant, together with its consolidated subsidiaries (collectively, the firm), is an indirectly wholly owned subsidiary of The Goldman Sachs Group, Inc., a Delaware corporation. The firm is a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified

client base that includes corporations, financial institutions, governments and high-net-worth individuals.

3. Goldman, Sachs & Co. is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Goldman, Sachs & Co. has been a member of SIFMA since the association was formed on November 1, 2006.

4. Goldman, Sachs & Co. understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Goldman, Sachs & Co. has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NYSE Arca.¹ Goldman, Sachs & Co. paid these fees as recently as June 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Goldman, Sachs & Co. has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

of-book data made available by NASDAQ. Goldman, Sachs & Co. paid these fees as recently as June 2014, and expects to continue paying the fees for NASDAQ's depth-of-book data in the future.

7. The fees described above limit Goldman, Sachs & Co.'s access to NYSE Arca's and NASDAQ's depth-of-book data because, if Goldman, Sachs & Co. were to cease paying these fees, it would no longer be able to access, use, and distribute the data to its employees and clients.

8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Goldman, Sachs & Co. suffers pecuniary harm by having to pay these fees in order to access, use, and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Goldman, Sachs & Co. is aggrieved by the challenged fees because they cause Goldman, Sachs & Co. to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Goldman, Sachs & Co. is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934 .

10. Goldman, Sachs & Co. currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 23, 2014

Elizabeth R. Pritchard
Elizabeth R. Pritchard

Exhibit 6

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF GORDON J TAYLOR OF JP MORGAN CHASE & CO.
IN SUPPORT OF STATEMENT OF THE STANDING OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Gordon Taylor, do declare as follows:

1. I am an Executive Director for JP Morgan Chase & Co. In that role, I am responsible for managing a global team of market data analysts who advise lines of business on the market data vendor environment, e.g., products, licensing, cost, etc. My job responsibilities give me first-hand knowledge of the market data products that JP Morgan Chase & Co. obtains and the importance of those products to the operation of JP Morgan Chase & Co.'s business.
2. JP Morgan Chase & Co. has various subsidiaries registered as broker-dealers that actively engage in a wide range of securities activities including trading equity securities.
3. JP Morgan Chase & Co. is currently a member of the Securities Industry and Financial Markets Association ("SIFMA"), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. JP Morgan Chase & Co. has been a member of SIFMA since the association was formed on November 1, 2006.

4. JP Morgan Chase & Co. understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. In particular, *Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”)

5. Pursuant to the NYSE Arca Rule Change, JP Morgan Chase & Co. has paid monthly fees since at least September 2010 in order to continue accessing, using and distributing depth-of-book data made available by NYSE Arca.¹ JP Morgan Chase & Co. paid these fees as recently as July 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, JP Morgan Chase & Co. has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing to depth-of-book data made available by NASDAQ. JP Morgan Chase & Co. paid these fees as recently as July 2014 and expects to continue paying the fees for NASDAQ’s depth-of-book data in the future.

7. The failure to pay the fees described above would eliminate JP Morgan Chase & Co.’s access to NYSE Arca’s and NASDAQ’s depth-of-book data because it would no longer be able to access, use, and distribute the data to its employees and clients.

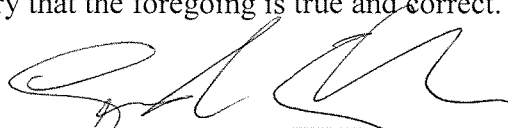
¹ NYSE Arca recently increased the amounts of these fees, see *Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees.

8. I am generally familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, JP Morgan Chase & Co. suffers pecuniary harm by having to pay these excessive fees so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934, in order to access, use and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, JP Morgan Chase & Co. is aggrieved by the challenged excessive fees because they cause JP Morgan Chase & Co. to expend money for the depth-of-book data that it would not have to expend in the absence of those excessive fees.

9. JP Morgan Chase & Co. currently suffers these harms caused by excessive fees and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 07/24/2014



Gordon Taylor, Executive Director

Exhibit 7

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF HOWARD MEYERSON OF LIQUIDNET, INC.
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Howard Meyerson, do declare as follows:

1. I am the General Counsel of Liquidnet, Inc. (“Liquidnet”). In my role as General Counsel of Liquidnet, I am generally responsible for legal matters relating to Liquidnet’s business, including legal issues concerning the electronic trading platform operated by Liquidnet. My job responsibilities give me first-hand knowledge of the market data products that Liquidnet obtains and the importance of those products to the operation of Liquidnet’s business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Liquidnet about these market data products.

2. Liquidnet operates an electronic trading system used by institutional investors to negotiate and execute large block orders for equity securities.

3. Liquidnet is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the

shared interests of hundreds of securities firms, banks, and asset managers. Liquidnet has been a member of SIFMA since the association was formed on November 1, 2006.

4. Liquidnet understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Liquidnet has paid monthly fees since at least September 2010 in order to continue accessing, using and distributing depth-of-book data made available by NYSE Arca.¹ Liquidnet paid these fees as recently as June 30, 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Liquidnet has paid monthly fees since at least September 2010 in order to continue accessing, using and distributing depth-of-book data made available by NASDAQ. Liquidnet paid these fees as recently as June 30, 2014, and expects to continue paying the fees for NASDAQ’s depth-of-book data in the future.

7. The fees described above limit Liquidnet’s access to NYSE Arca’s and NASDAQ’s depth-of-book data because, if Liquidnet were to cease paying these fees, it would no longer be able to access, use and distribute the data to its employees.

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

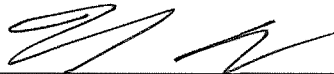
8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Liquidnet suffers pecuniary harm by having to pay these fees in order to access, use and distribute the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Liquidnet is aggrieved by the challenged fees because they cause Liquidnet to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Liquidnet is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934 .

10. Liquidnet currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 24, 2014



Howard Meyerson

Exhibit 8

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF ED OBUCHOWSKI OF CHARLES SCHWAB & CO., INC.
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Ed Obuchowski, do declare as follows:

1. I am the Senior Vice President for Technology Infrastructure Services. In my role as Senior Vice President for Charles Schwab & Co., Inc. (“Schwab”), I am responsible among other things for Schwab’s market data product management, technology, and infrastructure. My job responsibilities give me first-hand knowledge of the market data products that Schwab obtains and the importance of those products to the operation of Schwab’s business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Schwab about these market data products.

2. Schwab is a registered broker-dealer that serves over 9 million account holders, many of whom are self-directed and make their own trading and investing decisions, and some of whom rely on a Schwab representative or an independent investment adviser to help them

manage their investments. Schwab serves its clients through its websites, call centers, and branch network. This service includes distribution of market data to our clients.

3. Schwab is currently a member of the Securities Industry and Financial Markets Association (“SIFMA”), an industry association that brings together and seeks to advance the shared interests of hundreds of securities firms, banks, and asset managers. Schwab has been a member of SIFMA since the association was formed on November 1, 2006.

4. Schwab understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Schwab has paid monthly fees since at least September 2010 in order to continue receiving access to depth-of-book data made available by NYSE Arca.¹ Schwab paid these fees as recently as July 1st, 2014, and expects to continue paying the fees to access NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Schwab has paid monthly fees since at least September 2010 in order to continue receiving access to and using depth-of-book data made available by NASDAQ. Schwab paid these fees as recently as July 1st, 2014, and expects to continue paying the fees for NASDAQ’s depth-of-book data in the future.

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

7. The fees described above limit Schwab's access to NYSE Arca's and NASDAQ's depth-of-book data because, if Schwab were to cease paying these fees, it would no longer be able to access, use, and distribute the data, and because the fees are so high that they limit Schwab's ability to distribute the data to more of its employees and clients.


8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Schwab suffers pecuniary harm by having to pay these fees in order to obtain, use, and distribute to employees and clients the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Schwab is aggrieved by the challenged fees because they cause Schwab to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Schwab is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934.

10. Schwab currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 4/22/14



Ed Obuchowski

Exhibit 9

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of SECURITIES INDUSTRY
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by NYSE Arca, Inc.
and NASDAQ Stock Market LLC.

Admin. Proc. File No. 3-15350

DECLARATION OF STEVEN LISTHAUS OF WELLS FARGO AND COMPANY
IN SUPPORT OF STATEMENT OF JURISDICTION OF
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

I, Steven Listhaus, do declare as follows:

1. I am the Head of Market Data for Wells Fargo & Company. In my role as Head of Market Data for Wells Fargo & Company, I am responsible for providing market data to the Wells Fargo enterprise. My job responsibilities give me first-hand knowledge of the market data products that Wells Fargo & Company obtains and the importance of those products to the operation of Wells Fargo & Company's business. I also have this knowledge because of business records I have reviewed both as a routine part of my job and in preparation for this declaration and because of conversations I have had with colleagues at Wells Fargo & Company about these market data products.

2. Wells Fargo & Company is a provider of banking, mortgage, investing, credit card, insurance, and consumer and commercial financial services.

3. Wells Fargo & Company is currently a member of the Securities Industry and Financial Markets Association ("SIFMA"), an industry association that brings together and seeks

to advance the shared interests of hundreds of securities firms, banks, and asset managers. A number of Wells Fargo & Company wholly owned subsidiaries including Wells Fargo Securities, LLC, Wells Fargo Institutional Securities, LLC and Wells Fargo Advisors, LLC have been longstanding members of SIFMA and its predecessor organization the Securities Industry Association (“SIA”).

4. Wells Fargo & Company understands that SIFMA has filed applications for orders setting aside rule changes that various exchanges filed with the Commission, including rule changes by NYSE Arca and NASDAQ that imposed fees for access to and use of their depth-of-book market data products. *See Proposed Rule Change by NYSE Arca, Inc. Relating to Fees for NYSE Arca Depth-of-Book Data*, Release No. 34-63291, File No. SR-NYSEArca-2010-97 (Nov. 9, 2010) (“NYSE Arca Rule Change”); *Proposed Rule Change to Modify Rule 7019*, Release No. 34-62907; File No. SR-NASDAQ-2010-110 (Sept. 14, 2010) (“NASDAQ Rule Change”).

5. Pursuant to the NYSE Arca Rule Change, Wells Fargo & Company has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NYSE Arca.¹ Wells Fargo & Company paid these fees as recently as July 2014, and expects to continue paying the fees for NYSE Arca’s depth-of-book data in the future.

6. Pursuant to the NASDAQ Rule Change, Wells Fargo & Company has paid monthly fees since at least September 2010 in order to continue accessing, using, and distributing depth-of-book data made available by NASDAQ. Wells Fargo & Company paid these fees as

¹ NYSE Arca recently increased the amounts of these fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-71483, File No. SR-NYSEArca-2014-12 (Feb. 5, 2014), and amended the structure of its non-professional user fees, *see Proposed Rule Change Amending the Fees for NYSE ArcaBook*, Release No. 34-72560; File No. SR-NYSEArca-2014-72 (July 8, 2014).

recently as July 2014, and expects to continue paying the fees for NASDAQ's depth-of-book data in the future.

7. The fees described above limit Wells Fargo & Company's access to NYSE Arca's and NASDAQ's depth-of-book data because, if Wells Fargo & Company were to cease paying these fees, it would no longer be able to access, use, or distribute the data.

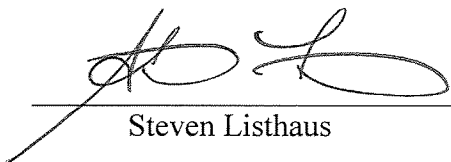
8. I am familiar with SIFMA's applications challenging the rule changes described above. As set forth in those applications, Wells Fargo & Company suffers pecuniary harm by having to pay these fees in order to obtain the depth-of-book data made available by NYSE Arca and NASDAQ. As a result, Wells Fargo & Company is aggrieved by the challenged fees because they cause Wells Fargo & Company to expend money for the depth-of-book data that it would not have to expend in the absence of those fees.

9. Further, as set forth in the applications, Wells Fargo & Company is aggrieved because it believes that the level of the prices charged for the depth-of-book data products at issue is so high as to be outside a reasonable range of fees under the Securities Exchange Act of 1934 .

10. Wells Fargo & Company currently suffers these harms and will continue to do so in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/24/14



Steven Listhaus