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 NYSEArca, Inc.	Admin. Proc. File No. 3-16006

BRIEF OF NYSE ARCA, INC. IN OPPOSITION TO APPLICANT SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION'S MOTION TO CONSOLIDATE RELATED CHALLENGES INTO PROCEEDING BEFORE CHIEF ADMINISTRATIVE LAW JUDGE

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NYSE Arca[1] respectfully submits this memorandum of law in opposition to the SIFMA Motions. SIFMA has completely changed its position regarding how the Commission should proceed, and the Commission should not countenance that change:

- SIFMA has not established that the rule challenges identified in the SIFMA Motions should be consolidated into the proceeding currently before the Chief ALJ, which the Commission specifically intended to be focused, discrete, and limited to *two* rule challenges. SIFMA had numerous opportunities to seek consolidation, and each time SIFMA not only declined to seek consolidation, but also expressly requested that the challenges to all other rule changes it was challenging be held in abeyance. The Commission agreed with SIFMA's arguments and rejected consolidation except for a single Nasdaq rule change that would allow Nasdaq to address directly its own depth-of-book data product rather than intervene in a proceeding related to ArcaBook. SIFMA is seeking reconsideration of the Commission's decision without acknowledging that is what it is doing or that it has changed its own position.[2]

- Even if this issue had not already been decided, SIFMA previously admitted that, because the markets continue to file new rule changes imposing fees for market data, "it would not be practicable to address in a single consolidated proceeding every rule change that implicates the same legal issues" that will be resolved in the '50 Proceeding (as defined below).[3]

Allowing SIFMA to reverse course and expand this proceeding beyond what it sought and the Commission chose will also unfairly prejudice NYSE Arca, which would have to address

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1 Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion to Consolidate Related Challenges Into Proceeding Before Chief Administrative Law Judge, dated October 22, 2014 (the "SIFMA Motions"), filed in each of Admin. Proc. File Nos. 3-15350, 3-15773, and 3-16006.

2 NYSE Arca understands the SIFMA Motion in the '50 Proceeding to be before the Commission, and not the Chief ALJ, as the Commission referred the '50 Proceedings (as consolidated with a portion of the '51 Proceeding) to an administrative law judge for preliminary determinations regarding jurisdiction and, if warranted, the merits regarding the two rule filings specified by the Commission. (Order Establishing Procedures and Referring Applications For Review To Administrative Law Judge For Additional Proceedings, Admin. Proc. File Nos. 3-1550 & 3-15351, dated May 16, 2014 ("May 16 Order") at 20). The Commission's order did not refer to an administrative law judge any issues of consolidation, which had already been settled by the Commission's order. (*Id.*)

3 Brief of Applicant Securities Industry and Financial Markets Association in Response to Order Regarding Procedures to Be Adopted in Proceedings, dated August 30, 2013 ("SIFMA Pr. Br."), at 9.

additional rule changes no one — not even SIFMA — previously sought to have addressed at this time. Accordingly, the Commission should deny the SIFMA Motions.

PRELIMINARY STATEMENT

SIFMA's request for consolidation is an extraordinary reversal from its consistent and repeated objection to consolidating its challenges to rule changes by the Exchanges that charge fees for proprietary market data products. When the Commission requested briefing on this very issue, SIFMA asserted that consolidation would be unnecessary and "highly inefficient."[4] As a fallback, SIFMA requested that to the extent the Commission was inclined to include any of the rule changes at issue in the '51 Proceeding (as defined below), it do so by consolidating *only* the Nasdaq Rule 7019 Rule Change.[5] The Commission gave SIFMA exactly what it asked for; the May 16 Order severed the Nasdaq Rule 7019 Rule Change from the '51 Proceeding, consolidated it with the '50 Proceeding, and held in abeyance determinations regarding all other rules challenged by SIFMA, including the Nasdaq Rule 7023 Rule Changes that SIFMA now seeks to have addressed. And consistent with SIFMA's approach to consolidation throughout this proceeding, when SIFMA filed the two challenges to the Recent ArcaBook Rule Changes (which it now seeks to have consolidated), SIFMA expressly requested that those challenges be held in abeyance pending a decision on its challenge to the First ArcaBook Rule Change, notwithstanding its admission that these new challenges involve fees relating to ArcaBook (which is already under consideration in this proceeding).[6]

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4 SIFMA Pr. Br. at 7-8.

5 Reply Brief of Applicant Securities Industry and Financial Markets Association Regarding Procedures to Be Adopted in Proceedings, dated September 20, 2013 ("SIFMA Pr. Reply Br."), at 10.

6 SR-NYSEArca-2014-12 Application ¶ 7; SR-NYSEArca-2014-72 Application ¶ 6.

That was, of course, consistent with SIFMA's overall position that it would not be practicable to address in a single consolidated proceeding every rule change that implicates the same legal issues that will be resolved in the '50 Proceeding.[7] And all the Chief ALJ's Scheduling Order preliminarily held was that SIFMA has associational standing to challenge the two specific depth-of-book fee rules at issue in the '50 Proceeding. The Chief ALJ made no findings regarding jurisdiction to consider any other challenges, because no such issues were before her. The Commission has already held (as SIFMA requested) that these rule challenges are not appropriate for consolidation because they relate to materially different issues.

Yet SIFMA now summarily asserts that two Recent ArcaBook Rule Changes "necessarily" share the same fact pattern as the First ArcaBook Rule Change because they all relate to the same depth-of-book market data product. (SIFMA Motions at 8.) But the assertion that all fees related to depth-of-book market data products can be reviewed in one fell swoop is a gross oversimplification of the respective rule changes, and overlooks the fact that the two Recent ArcaBook Rule Changes implicate different categories and sub-categories of fees, such as tiered fees, non-professional fees, and the application of fee caps.

Indeed, the facts unique to the Recent ArcaBook Rule Changes show why it is important to consider who uses what market data products and how they do so; despite NYSE Arca's arguments that those issues should be considered in addressing who might be "aggrieved" by any particular filing, the Chief ALJ deferred these as merits considerations.[8] These differences underscore the critical gatekeeping function of the standing inquiry and the need for SIFMA to provide real evidence that members are aggrieved by each specific rule filing.

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7 SIFMA Pr. Br. at 9.

8 NYSE Arca does not concede that the Chief ALJ's determination of jurisdiction for the two filings at issue was correct. *See infra* at 11-12.

Permitting consolidation in such circumstances would not only prejudice NYSE Arca in the current proceeding by forcing it to defend three distinct rule changes in an expedited fashion, but it would lower the jurisdictional bar to such an extent that the Commission and SROs could be dragged into litigation on the basis of nothing more than a form declaration that someone was "aggrieved." That would risk creating a nearly continuous ratemaking proceeding, which NYSE Arca believes is neither required by the Exchange Act nor a reasonable use of the Commission's and the SROs' time and resources.

PROCEDURAL HISTORY

On May 31, 2013, SIFMA submitted an application, File No. 3-15350 (the "'50 Proceeding"), seeking an order setting aside the First ArcaBook Rule Change, which imposed certain fees for the ArcaBook depth-of-book market data product. On the same day, SIFMA filed an additional application (the "'51 Proceeding") challenging 22 rule filings authorizing fees for a number of exchanges, including Nasdaq. The Commission subsequently issued an order directing the parties to submit briefs regarding several issues, including whether SIFMA's applications should be consolidated into one proceeding. (Order Regarding Procedures to be Adopted in Proceedings, Admin. Proc. File Nos. 3-15350 & 3-15351, dated July 3, 2013.) That Order requested briefing on the very issue SIFMA raises here—whether the challenges to any other rule changes should be consolidated into the '50 Proceeding. The parties' positions were absolutely clear:

- SIFMA contended that consolidation was unnecessary and would be unhelpful. It argued that "the most appropriate and efficient way to proceed with these parallel applications" would be to handle the '50 Proceeding (which at that time covered only the ArcaBook rule filing) first, holding other applications "in abeyance pending a decision on the application in Proceeding No. 15350." (SIFMA Pr. Br. at 7-8.) SIFMA asserted that the Commission should decide the legal issues in the '50 Proceeding first because a determination of the "core legal issue . . . *i.e.*, what evidence is necessary to show that a fee is consistent with the requirements of the Exchange Act and

applicable regulations," would simplify the Commission's consideration of SIFMA's other applications.[9] (*Id.*)

- Nasdaq requested that the Commission include one Nasdaq rule change in the '50 Proceeding. (*See* Brief of the Nasdaq Stock Market LLC; Nasdaq OMX PHLX; and Edgx Exchange, Inc. in Response to Commission's Order Regarding Procedures to Be Adopted in Proceedings, dated August 30, 2013, at 19.) SIFMA contended that consolidating even *one* Nasdaq rule change application into the '50 Proceeding was unnecessary, but suggested that, if the Commission were to agree with Nasdaq on that issue, it select File No. SR-Nasdaq-2010-110, because that rule change "involves fees for a depth-of-book data product, and thus would reduce the complexity inherent in handling factual variations." (SIFMA Pr. Reply Br. at 10.) SIFMA did not suggest that any other Nasdaq rule changes—including the Nasdaq Rule 7023 Rule Changes at issue in its Motion in the '51 Proceeding—be consolidated into the '50 Proceeding.

The Commission later issued the May 16 Order, directing an administrative law judge to make an initial determination as to jurisdiction and, if appropriate, the merits. (May 16 Order at 20.) The Commission's order also, at SIFMA's request, consolidated just one of SIFMA's other applications challenging a Nasdaq rule change into the '50 Proceeding. (*Id.* at 21.) The Commission expressly determined that "it is appropriate to withhold issuance of an order governing further proceedings in the remainder of the '51 Proceeding until after the resolution of the '50 Proceeding," including "additional applications SIFMA filed after the proceedings." (*Id.*; *id.* at 21 n.118.[10])

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9 NYSE Arca did not initially take a view as to whether SIFMA's applications should be consolidated into one proceeding. (*See* Response of the New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC to the Commission's Order Regarding Preliminary Matters, dated August 30, 2013, at 10.) NYSE Arca did, however, request that the applications "be handled in the most efficient manner possible, such that the parties can address in the first instance the common issues of law relating to all Applications without having to address each specific rule filing and its record." (*Id.*)

10 The "additional applications" identified by the Commission necessarily included the first of the NYSE Arca petitions SIFMA now seeks to consolidate, as that petition, filed on March 8, 2014, "remained pending" when the Commission issued its May 16 Order. (May 16 Order at 2 n.2 & 21 n.118.)

The Chief ALJ conducted a telephonic conference on June 23, 2014, and thereafter directed the parties to submit briefs regarding SIFMA's contention that it has associational standing under Section 19(d) of the Exchange Act to challenge the two rule changes at issue in the '50 Proceeding. On October 20, 2014, the Chief ALJ preliminarily held that SIFMA has standing to challenge the rule changes at issue in the '50 Proceeding and set a schedule for further proceedings in the case. The Scheduling Order requires the filing of witness lists, expert reports, and prehearing briefs in December and January, and sets a hearing date for February 2, 2015. Not surprisingly, the Chief ALJ's order did not address whether SIFMA has associational standing to challenge any other rule changes, an issue the Commission did not refer to the Chief ALJ and that was not litigated by the parties.

On October 22, 2014, SIFMA filed the SIFMA Motions, suddenly taking the position that consolidation would "promote economy by avoiding unnecessary cost and delay and conserving administrative resources." (SIFMA Mot. at 2.) SIFMA advances these arguments even though they directly contradict its prior position that consolidating other rule changes into the '50 Proceeding would be "inefficient." (SIFMA Pr. Reply Br. at 10.) Indeed, SIFMA directly asserted that same position when it filed its applications challenging the two Recent ArcaBook Rule Changes. In both of those applications, SIFMA noted that the rule filings "involved the same product" at issue in the '50 Proceeding and nonetheless expressly requested that the applications "be held in abeyance pending a decision" in the '50 Proceeding, the opposite of the position it now takes. (SR-NYSEArca-2014-12 Application ¶ 7; SR-NYSEArca-2014-72 Application ¶ 6.)

ARGUMENT

I. SIFMA'S MOTION TO CONSOLIDATE SHOULD BE DENIED

A. Consolidation Was Opposed By SIFMA And Considered And Rejected By The Commission

SIFMA has opposed consolidation at every opportunity until now, and it should not be allowed to switch positions and relitigate an issue that the Commission rejected *at SIFMA's behest.* In direct response to the Commission's request for briefing on the issue of consolidation, SIFMA twice asserted that consolidation was unnecessary and counterproductive. and requested that, if the Commission were inclined to grant consolidation at all, it do so with the Nasdaq Rule 7019 Rule Change petition—not the petition requested by Nasdaq. Indeed, SIFMA stressed that only a single petition should be consolidated into the '50 Proceeding because the other petitions—including the Nasdaq petitions it now focuses on—had "factual variations" that would increase the complexity of the proceeding. (SIFMA Pr. Br. at 10; SIFMA Pr. Reply Br. at 10.)

All but one of the applications at issue in the SIFMA Motions were before the Commission when it ordered that proceedings regarding all applications other than the '50 Proceeding (incorporating the challenge to the Nasdaq Rule 7019 Rule Change) be held in abeyance pending resolution of the '50 Proceeding. The four Nasdaq petitions SIFMA now seeks to consolidate were part of the '51 Proceeding and were included in the briefing, and if SIFMA wanted the Commission to consolidate those challenges with the '50 Proceeding, the time to make that request was when the Commission ordered briefing on exactly this issue. SIFMA instead *opposed* consolidation. And SIFMA has—until now—been consistent in that regard: In the bodies of the two ArcaBook-related applications it now seeks to consolidate, SIFMA explicitly requested that both applications "be held in abeyance pending a decision" in

the '50 Proceeding despite expressly acknowledging that both applications "involve[] the same product" as the '50 Proceeding. (SR-NYSEArca-2014-12 Application ¶ 7; SR-NYSEArca-2014-72 Application ¶ 6.) That is, SIFMA previously asserted that whether an application involved the "same product" was irrelevant to consolidation.

The May 16 Order also fully resolved the issue of whether to consolidate both challenges to the Recent ArcaBook Rule Changes. SIFMA misleadingly states that these rule changes were unaddressed by the Commission's May 16 Order, but that order noted the existence of other applications (May 16 Order at 1 n.2) and expressly provided that the Commission would "withhold further proceedings" regarding *any* applications filed by SIFMA "until after the resolution of the '50 Proceeding." (May 16 Order at 21 n.118.) Certainly, this applies to the challenge to SR-NYSEArca-2014-12 (which was pending at the time), and there is no reason to think the Commission intended to apply a different rule to any later-filed petitions, particularly as the Commission understood that SIFMA was continuing to file new applications and consistently asking that they be held in abeyance.

Finally, the relief SIFMA seeks would greatly expand the scope of the issues the Commission referred to the Chief ALJ. The Committee referred to the Chief ALJ only "the '50 Proceeding (consolidated with a portion of the '51 Proceeding [as provided for in the Order])." (May 16 Order at 19.) In the event that the Chief ALJ determined that the Commission has jurisdiction over the applications, the Chief ALJ was directed to "hold a hearing addressing whether the *challenged rules* should be vacated under the statutory standard set forth in Exchange Act Section 19(f) ... and after such a hearing [] issue an initial decision in this matter." (*Id.* (emphasis added).) The Commission expressly declined to refer issues relating to any other applications to the Chief ALJ.

B. The Rule Challenges Identified In The Motion Are Inappropriate For Consolidation Because They Require Consideration Of Materially Different Facts And A New Question Of Standing

In assessing whether proceedings involve common questions of law or fact and are appropriate for consolidation, the Commission must look beyond similarities in the general product and determine that the distinct facts underlying each rule present sufficient similarities to warrant consolidation.[11] Consolidation is discretionary, and is applicable where it appears appropriate to avoid unnecessary cost or delay and will not prejudice the rights of any party. Rule of Practice 201(a). The Commission should reject consolidation because the challenges proposed for consolidation present new facts and unique questions concerning different market data fees and raise separate and distinct standing issues regarding each type of market data fee.

The Recent ArcaBook Rule Challenges share some common issues with the '50 Proceeding, but those rule filings differ significantly from the First ArcaBook Rule Change. One rule filing, for example, relates to fees charged to non-professional users. This portion of this filing institutes a tiered access fee and *lowers* the fees charged to users who purchase market data at the levels contemplated by the lower-priced tiers. SIFMA's Motion ignores that issue and the complexity of having to address these distinct types of fees charged to the distinct types of market data purchasers who might be affected by these specific changes.[12] The other change in

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11 *See* Frank J. Custable, Jr., *Order Denying Consolidation*, Admin. Proc. File Nos. 3-7742 and 3-7899 (Jan. 7, 1993) (denying consolidation of proceedings, despite involving the same parties and "similar violations," because, among other reasons, of the "distinct facts" underlying the allegations).

12 These issues also raise issues of standing, which SIFMA has not addressed. The form declarations submitted by SIFMA members state simply that "[Name of SIFMA member]" has paid monthly fees since [date] in order to continue accessing, using, and distributing depth-of book data made available by [SRO]." But no SIFMA member has provided any declaration indicating *which* market data fees it pays under the First ArcaBook Rule Change, whether it pays any market data fee that would be affected by

that rule filing does not address a specific market data *fee*, but rather relates to a *fee cap* for non-professional users. This rule change raises additional issues of whether any SIFMA member (let alone the SIFMA members that submitted declarations) is subject to and would be adversely affected by the revised fee cap; unless an ArcaBook user would actually see its fees increase as a result of the cap change, it cannot possibly be aggrieved by that change, and yet SIFMA has not sought to provide any evidence that any of its members would be so affected. Finally, Rule Filing SR-NYSEArca-2014-12, among other things, adjusted the subscriber fee for professional users, but did not adjust the subscriber fee charged for non-professional users.[13] This also presents different jurisdictional questions, which are also left unaddressed by the SIFMA Motions.

That the ArcaBook rule changes implicate different facts is not merely an academic question. A party has standing to challenge market data fees if it is a "person aggrieved" under Section 19(d)(2) of the Exchange Act, and a party is aggrieved if an SRO has "prohibit[ed] or limit[ed]" the party "in respect to access to services." 15 U.S.C. §§ 78s(d)(1), (d)(2). The Commission and D.C. Circuit have already held that NYSE Arca is entitled to sell ArcaBook data (as opposed to giving it away for free) and that "not every fee charged by an SRO will constitute a reviewable limitation on access." (May 16 Order at 13-14; *NetCoalition v. SEC*, 615 F.3d 525, 530 & n.6 (D.C. Cir. 2010).) Yet SIFMA simply assumes that claiming to be aggrieved by any aspect of ArcaBook pricing is sufficient to challenge any other aspect of

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the two rule filings at issue, or how it would be affected by those filings. (See *infra* p. 11.)

13 The rule filing adjusted the fee charged for non-professional users only in that the fee per user went from $15 for Tape A and Tape B securities and $15 for Tape C securities to $30 (that is, the same aggregate amount) for Tape A, B, and C securities. To the extent SIFMA believes that such aggregation of charges with no asserted change in services causes any of its members to be "persons aggrieved," none of its members' form declarations and nothing in the SIFMA Motions support—or even explain—this notion.

ArcaBook pricing. That cannot be the law, as it would risk creating an effectively continuous ratemaking proceeding before the Commission.

In order to establish standing, SIFMA must, at a minimum, show that its members are aggrieved *specifically by fees authorized by the rule changes at issue.* Yet SIFMA has not provided *any* evidence that: (i) its members are subject to the new fee cap (to which any given user may or may not be subject); (ii) its members are aggrieved by the new tiered fee structure (which may benefit a user by charging a lower fee or keep the user at the same fee); (iii) specifies which type of market data fee each member pays or is subject to and how the rule changes affect how much each member has actually spent or continues to spend on those products; or (iv) the rule changes (some of which *lower* a fee) impose a fee structure that is "so high as to be outside a reasonable range of fees under the Exchange Act." (Order at 14.) SIFMA's bald assertion that the rule changes involve the same product ignores that the filings relate to different *fees* and is insufficient to warrant consolidation as a matter of law.[14]

It is clear that the only reason that SIFMA is seeking consolidation now is because the Chief ALJ's ruling on jurisdiction set the bar so low that SIFMA believes it can now dispense with making any jurisdictional showing whatsoever on these petitions—indeed, it does not even try. SIFMA's opportunistic reversal demonstrates that, if standing is to be a meaningful gatekeeping requirement—as the Commission's Order stated—then one should not be able to claim to be a "person aggrieved" under the Exchange Act simply by asserting that one pays a fee and believes it is too high.[15] That too-low bar allows anyone paying an SRO fee to require the

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14 *See* Frank J. Custable, Jr., *Order Denying Consolidation*, Admin. Proc. File Nos. 3-7742 and 3-7899 (Jan. 7, 1993).

15 The Commission held that "an applicant cannot object to an SRO fee simply because it believes that it is too high. Rather, an applicant must assert a basis that, if established,

Commission to expend its limited resources in reviewing that fee and require the market to defend those allegations in potentially complex proceedings. Consequently, the Commission directed SIFMA to establish: (i) that its members are actually subject to a limitation of access to ArcaBook; (ii) a basis other than SIFMA's belief that a fee is too high "that, if established, would lead the Commission to conclude that the fee violates Exchange Act Section 19(f);" and (iii) that a limitation of access limits the party's "ability to utilize one of the fundamentally important services offered by the SRO." (May 16 Order at 15.) SIFMA's submission to the Chief ALJ, consisting of nine generic and nearly identical declarations,[16] fell far short of the Commission's requirements—and in the SIFMA Motions, SIFMA attempts to avoid even this perfunctory showing. (*See supra* n.12.)

When the Commission rejected consolidation of the petitions that are the subject of this Motion, and referred the '50 Proceeding to the Chief ALJ, it did so to "conserve resources" and "secure the just, speedy, and inexpensive determination" of this proceeding. These considerations are as important today as they were when the Commission issued its order. Consolidation would not only waste judicial resources, it would also materially prejudice NYSE Arca by forcing it to defend additional rule filings before there is a clear determination in the '50 Proceeding on whether there has been a denial of access and how even to assess that question in this context, the key point the Commission stressed in structuring the '50 Proceeding as it did.

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would lead the Commission to conclude that the fee violates Exchange Act Section 19(f)." (May 16 Order at 14.)

16 The declarations from SIFMA's members simply state that those members pay for ArcaBook data (but do not say how or how much), profess to agree with SIFMA's assertions that the pricing does not conform to the Exchange Act, and assert that they are injured because ArcaBook data is not free. The declarations are so generic and non-substantive that they could be submitted to challenge any proprietary market data fee simply by changing the name of the product mentioned in the declaration and nothing else, and in fact that is precisely what SIFMA is now trying to accomplish. That is clearly not what the Commission envisioned in its May 16 Order.

In the end, one of the clearest arguments for why NYSE Arca would be prejudiced by consolidation comes from SIFMA itself. In opposing consolidation, SIFMA asserted that *all* its other petitions had "factual variations" and that those variations would increase the complexity of any consolidated proceeding. (SIFMA Pr. Reply Br. at 10.) As the Commission held in this matter, "[p]roceeding first with a limited group of rule challenges will provide an opportunity to address the common substantive legal issues that relate to all filings for the first time following *NetCoalition I*." (May 16 Order at 21.) It would prejudice NYSE Arca to have to defend multiple rule filings without the Commission first addressing the "common substantive legal issues" post-*NetCoalition I*, as the Commission contemplated in its order.

CONCLUSION

For the reasons set forth above, NYSE Arca respectfully requests that the Commission deny the SIFMA Motions. In addition, NYSE Arca notes that the Commission has the authority to review the Chief ALJ's jurisdictional ruling *sua sponte*. Rule of Practice 400(a). In light of the Commission's view that jurisdiction provides an important gatekeeping function in the context of denial of access proceedings, SIFMA's failure to submit appropriate evidence of the aggrieved person status of its members, and its attempt to leverage that failure to do precisely what the Commission indicated should not happen, NYSE Arca respectfully submits that the Commission should exercise such review here.

Dated: October 29, 2014

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October 29, 2014

VIA HAND DELIVERY
The Honorable Brenda P. Murray
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, N.E.
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Re: *In The Matter Of The Application Of Securities Industry And Financial Markets Association For Review Of Action Taken By Certain Self-Regulatory Organizations*, Admin. Proc. File Nos. 3-15350, 3-15773, 3-16006

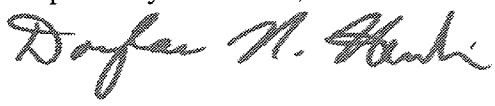
Dear Chief Judge Murray:

We represent NYSE Arca, Inc. ("NYSE Arca") in connection with the above-captioned proceedings.

On October 22, 2014, the Securities Industry and Financial Markets Association ("SIFMA") filed with the Securities and Exchange Commission separate motions for consolidation in Admin. Proc. File Nos. 3-15350, 3-15351, 3-15773, and 3-16006 the ("SIFMA Motions"). Although the SIFMA Motions are not before Your Honor because they seek relief beyond the scope of the issues referred to Your Honor by the Commission, SIFMA provided Your Honor with courtesy copies of its motions by letter dated October 22, 2014. By this letter,

NYSE Arca similarly is providing Your Honor with copies of its oppositions in Admin. Proc. File Nos. 3-15350, 3-15773, and 3-16006 (that is, the proceedings in which NYSE Arca was served).

Respectfully submitted,



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cc: William W. Miller, Esq., Attorney-Advisor, Office of Administrative Law Judges
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