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.

Admin. Proc. File No. 3-16188

APPLICATION FOR AN ORDER SETTING ASIDE RULE CHANGE OF NYSE ARCA, INC. LIMITING ACCESS TO ITS SERVICES

The Securities Industry Financial Markets Association ("SIFMA") submits this application, pursuant to Sections 19(d) and 19(f) of the Securities Exchange Act of 1934 (the "Act"), for an order setting aside the *Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE Arca Integrated Fee, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, and to Establish a Fee for Managed Non-Services for NYSE Arca BBO*, Release No. 34-73011, File No. SR-NYSEArca-2014-93 (the "Rule Change"). The Rule Change limits the access of SIFMA's members and their customers to market data made available by NYSE Arca, Inc. and is inconsistent with the Act.

1. SIFMA is a trade association that represents certain securities firms, banks, and asset managers. Market data is integral to the business of SIFMA's members and their customers, and members of SIFMA regularly access or seek to access the market data that NYSE Arca makes available through its NYSE ArcaBook product.

2. On September 5, 2014, NYSE Arca provided notice that it filed the Rule Change, which purports to allow NYSE Arca to charge new and amended fees for market data products made available exclusively by NYSE Arca. The SEC has not suspended the Rule Change or instituted proceedings to disapprove it under Section 19(b)(2)(B).

3. SIFMA previously has submitted other applications pursuant to Sections 19(d) and 19(f) challenging earlier rule changes by NYSE Arca and other exchanges that adopted or amended fees for various market data products. In an order dated May 16, 2014, the SEC held that (1) it has jurisdiction to review such applications by persons aggrieved by an exchange's rule change imposing fees for market data, and (2) such fees will be held unenforceable to the extent they are inconsistent with the Act, including the Act's requirement that the data for which those fees are imposed be made available on "fair and reasonable" terms. Order Establishing

Procedures 10–19, Rel. No. 34-72182, Admin. Proc. File Nos. 3-15350 & 3-15351 (May 16, 2014). In addition, the SEC referred to an administrative law judge ("ALJ") SIFMA's challenges to two of the rule changes and stayed proceedings on the other rule changes pending resolution of the referred challenges. *Id.* at 19–22.

4. The SEC should set aside the Rule Change because it constitutes a limitation on access to NYSE Arca's services for purposes of Section 19(d) and (f). This is so because it limits access to critical market data for anyone unwilling or unable to pay the onerous, supra-competitive fees NYSE Arca is charging. Furthermore, the SEC should set aside the Rule Change under Sections 19(d) and (f) because SIFMA's members and their customers must pay fees that are not consistent with the Act. The Rule Change is not fair and reasonable, and it does not provide for the equitable allocation of reasonable fees among persons using NYSE Arca's facilities. Nor does it promote just and equitable principles of trade or protect investors and the public interest. Accordingly, the Rule Change is unenforceable under Section 19(b)(3)(C).

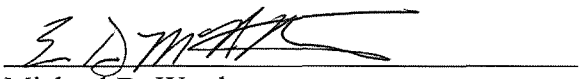
5. Under the SEC's "market-based" approach, market forces cannot provide a basis for finding that an exchange's non-core data fees are "fair and reasonable" unless the exchange is subject to significant competitive forces in setting the fees. NYSE Arca has offered no evidence of such competitive forces. NYSE Arca also has provided no evidence of the cost of collecting and distributing the data at issue, despite the D.C. Circuit's finding that such costs are undeniably relevant evidence, *see NetCoalition v. SEC*, 615 F.3d 525, 537–38 (D.C. Cir. 2010), and another exchange's concession that its marginal costs are "small, or even zero."

6. SIFMA respectfully requests that this application be held in abeyance pending a decision in the proceeding before the ALJ, as has been done with other challenges.

Dated: October 2, 2014

Respectfully submitted,

SIDLEY AUSTIN LLP



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Rule of Practice 420(c) Statement: Service upon the applicant may be accomplished by serving their attorneys at the address listed above.