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 Certain Self-Regulatory Organizations Listed in Exhibit A Annexed Hereto.

Admin. Proc. File No. 3-16204

APPLICATION FOR AN ORDER SETTING ASIDE RULE CHANGES OF CERTAIN SELF-REGULATORY-ORGANIZATIONS LIMITING ACCESS TO THEIR 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 certain rule changes (the "Rule Changes") unilaterally issued by the self-regulatory organizations ("SROs") listed in Exhibit A attached hereto. The Rule Changes limit the access of SIFMA's members and their customers to market data made available by the SROs and are 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 the SROs make available.

2. The SROs have provided notice that they filed the Rule Changes, which purport to allow them to charge new and amended fees for market data products made available exclusively by the SROs. The Rule Changes became effective upon filing with the SEC, and the SEC has not suspended the Rule Changes or instituted proceedings to disapprove them.

3. SIFMA has submitted other applications pursuant to Sections 19(d) and 19(f) challenging earlier rule changes by the SROs 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 SRO'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 challenges. *Id.* at 19–22.

4. The SEC should set aside the Rule Changes because they constitute limitations on access to the SRO's services for purposes of Section 19(d) and (f). This is so because they limit access to critical market data for anyone unwilling or unable to pay the onerous, supra-competitive fees the SROs are charging. Furthermore, the SEC should set aside the Rule Changes 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 Changes are not "fair and reasonable," 15 U.S.C. § 78k-1(c)(1)(C), and they do not "provide for the equitable allocation of reasonable . . . fees . . . among . . . persons using [the SROs'] facilities," *id.* § 78f(b)(4). Nor do the Rule Changes "promote just and equitable principles of trade" or "protect investors and the public interest," *id.* § 78f(b)(4). In sum, the Rule Changes are unenforceable under Section 19(b)(3)(C).

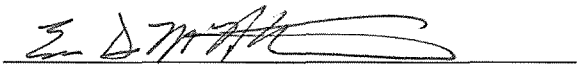
5. Under the SEC's "market-based" approach, market forces cannot provide a basis for finding that an SRO's non-core data fees are "fair and reasonable" unless the SRO is subject to significant competitive forces in setting the fees. The SROs have offered no evidence of such competitive forces. The SROs also have 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 one SRO'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 16, 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.

EXHIBIT A

Exchange(s)	File Number	Release Number	Date of Notice
New York Stock Exchange LLC	SR-NYSE-2014-43	34-74923	8/26/2014
BATS Exchange, Inc.; BATS Y - Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex, Inc., and NYSE Area, Inc.	S7-24-89	34-73279	10/1/2014

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, I caused a copy of the foregoing Application For An Order Setting Aside Rule Changes Of Certain Self-Regulatory Organizations Limiting Access To Their Services to be served on the parties listed below by First Class Mail. Service was accomplished on the Exchanges via First Class Mail because of the large service list.

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Dated: October 16, 2014

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