

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of BLOOMBERG L.P.

For Review of Action Taken by a Certain Self-
Regulatory Organization Listed in Exhibit A
Annexed Hereto.

Admin. Proc. File No. 3-18145

APPLICATION FOR AN ORDER SETTING ASIDE
RULE CHANGE OF A CERTAIN SELF-REGULATORY
ORGANIZATION LIMITING ACCESS TO ITS SERVICES

critical market data for anyone unwilling or unable to pay the onerous, supra-competitive fees the SRO is charging. Furthermore, the SEC should set aside the Rule Change under Sections 19(d) and (f) because BLP and its customers must pay fees that are not consistent with the Act or the rules hereunder. The Rule Change is not “fair and reasonable,” 15 U.S.C. § 78k-1(c)(1)(C), and does not “provide for the equitable allocation of reasonable ... fees ... among ... persons using the [SRO’s] facilities,” *id.* § 78f(b)(4), and “permit[s] unfair discrimination,” *id.* § 78f(b)(5). Nor does the Rule Change “promote just and equitable principles of trade” or “protect investors and the public interest,” *id.* § 78f(b)(4). In sum, 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 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).

6. In addition, to the extent the Rule Change purports to assert an ownership or other proprietary interest in downstream uses of the facts comprising market data, the Rule Change is inconsistent with the Act and for additional reasons unlawful.

7. For the foregoing reasons, BLP respectfully requests that the SEC set aside this Rule Change.

Dated: August 28, 2017

Respectfully submitted,

SIDLEY AUSTIN LLP

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

Michael D. Warden
Benjamin Beaton
Kevin P. Garvey
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
mwarden@sidley.com

Counsel for Bloomberg L.P.

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

EXHIBIT A

Exchange	File Number	Release Number	Date of Notice
NASDAQ Stock Market LLC	NASDAQ-2017-077	34-81256	July 28, 2017

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In The Matter of:

The Application of BLOOMBERG L.P.

For Review of Action Taken by a Certain Self-Regulatory Organization Listed in Exhibit A Annexed Hereto.

Admin. Proc. File No. 3-18145

CERTIFICATE OF SERVICE

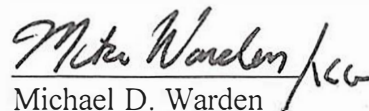
I hereby certify that on August 28, 2017, I caused a copy of the foregoing Application For An Order Setting Aside Rule Change Of A Certain Self-Regulatory Organization Limiting Access To Its Services to be served on the parties listed below by First Class Mail.

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(*via hand delivery*)

Edward S. Knight
Executive Vice President and General Counsel
NASDAQ Stock Market LLC
One Liberty Plaza
165 Broadway
New York, NY 10006

Eugene Scalia
Amar C. Tayrani
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave N.W.
Washington, Dc 20036
202-955-8500
escalia@gibsondunn.com

Dated: August 28, 2017


Michael D. Warden