

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89503 / August 7, 2020

Admin Proc. File No. 3-15350

In the Matter of the Applications of
SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION
For Review of Action Taken by
NYSE Arca, Inc., and Nasdaq Stock Market LLC

ORDER DISMISSING PROCEEDINGS

This proceeding involves a challenge under Section 19(d) of the Securities Exchange Act of 1934 to certain fees for market data imposed by NYSE Arca, Inc., and Nasdaq Stock Market LLC, pursuant to generally applicable fee rules, as improper limitations or prohibitions of access to services offered by those national securities exchanges. We issued an opinion holding that the exchanges had failed to establish that the challenged fees were consistent with the purposes of the Exchange Act, and accordingly set them aside pursuant to Exchange Act Section 19(f).¹

On appeal, the Court of Appeals for the D.C. Circuit held that Exchange Act “Section 19(d) is not available as a means to challenge the reasonableness of generally-applicable fee rules.”² The court held that “for a fee rule to be challengeable under Section 19(d), it must, at a minimum, be targeted at specific individuals or entities.”³ Thus, the court held that “Section 19(d) is not an available means to challenge the fees at issue” in this proceeding.”⁴ The court

¹ *Sec. Indus. & Fin. Mkts. Ass’n*, Exchange Act Release No. 34-84432, 2018 WL 5023228 (Oct. 16, 2018).

² *NASDAQ Stock Mkt., LLC v. SEC*, 961 F.3d 421, 424 (D.C. Cir. 2020); *see also id.* at 430 (“[B]ased on the text and structure of the Exchange Act, we conclude that Section 19(d) is not available as a means to challenge generally-applicable fee rules.”).

³ *Id.* at 427-28.

⁴ *Id.* at 426 n.1.

vacated the Commission's opinion and remanded for further proceedings consistent with the court's opinion.⁵ As a result of the D.C. Circuit's holding, the fees at issue in this proceeding cannot be challenged under Exchange Act Section 19(d), and the proceeding must be dismissed.

Accordingly, IT IS ORDERED that this proceeding is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary

⁵ *Id.* at 424, 431. The court's mandate issued on August 6, 2020.