

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 Actions Taken by Self-Regulatory
Organizations

Admin. Proc. File No. 3-15350

The Honorable Brenda Murray,
Chief Administrative Law Judge

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR ORAL ARGUMENT OF
THE NASDAQ STOCK MARKET LLC AND NYSE ARCA, INC.**

Pursuant to Rule 451 of the Securities and Exchange Commission's Rules of Practice, the Nasdaq Stock Market LLC and NYSE Arca, Inc. respectfully submit this memorandum in support of their Motion for Oral Argument. Under Rule 451, motions for oral argument "with respect to whether to affirm all or part of an initial decision by a hearing officer *shall* be granted unless exceptional circumstances make oral argument impracticable or inadvisable." 17 C.F.R. § 201.451(a) (emphasis added). The Commission should set this matter for argument because (i) no circumstances militate against oral argument and (ii) there are substantial considerations that weigh in favor of hearing oral argument in this important matter.

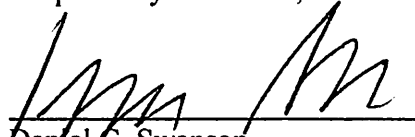
The decision on review is the June 1, 2016 initial decision of the Chief Administrative Law Judge ("ALJ"), who rejected Section 19(d) applications relating to depth-of-book data products. The challenge by the Securities Industry and Financial Markets Association ("SIFMA") to the Chief ALJ's decision seeks to raise significant questions regarding the application of the market-based approach for evaluating exchanges' market-data fees adopted by the Commission in its ArcaBook Order, 73 Fed. Reg. 74,770 (Dec. 9, 2008), and upheld by the

D.C. Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010). Although that market-based approach itself is well-settled, this is the first time that the Commission will be applying it in a Section 19(d) proceeding. At the Commission's direction, the Chief ALJ held a five-day hearing in which she considered hundreds of exhibits and testimony from eight witnesses; she thereafter issued a detailed 44-page opinion upholding the rule changes at issue.

Oral argument will facilitate the Commission's evaluation of that extensive evidentiary record. A thorough and considered determination by the Commission is particularly important in this matter because SIFMA has filed more than 150 similar rule challenges, and the Commission's decision is therefore likely to establish the governing framework for resolving those numerous other Section 19(d) proceedings.

Accordingly, the Commission should grant the Motion for Oral Argument.

Respectfully submitted,



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Dated: November 7, 2016

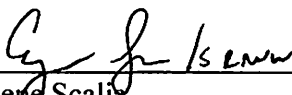
CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2016, I caused a copy of the foregoing document to be served on the parties listed below via First Class Mail, except as otherwise provided. Service was accomplished on SIFMA via First Class Mail because of the large service list.

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