

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

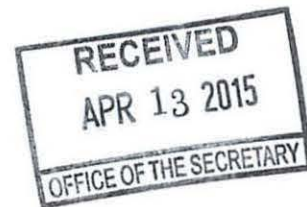
In The Matter of:

The Application of SECURITIES INDUSTRY  
AND FINANCIAL MARKETS ASSOCIATION

For Review of Action Taken by BATS Y-  
Exchange, Inc.

Admin. Proc. File No. 3-16490

**APPLICATION FOR AN ORDER SETTING ASIDE RULE CHANGE OF  
BATS Y-EXCHANGE, 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 to Amend the Fees for the BATS One Market Data Product*, Release No. 34-74599; File No. SR-BYX-2015-19 (“the Rule Change”). The Rule Change limits the access of SIFMA’s members and their customers to market data made available by BATS Y-Exchange, 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 BATS Y-Exchange, Inc. makes available.

2. BATS Y-Exchange, Inc. (“BYX”) has provided notice that it filed the Rule Change, which purports to allow it to charge new and amended fees for market data products and related services made available exclusively by BYX. The Rule Change became effective upon filing with the SEC, and the SEC has not suspended the Rule Change or instituted proceedings to disapprove it.

3. SIFMA has submitted other applications pursuant to Sections 19(d) and 19(f) challenging earlier rule changes by BYX and other Self-Regulatory Organizations (“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 the Chief Administrative Law Judge (“Chief 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 Change because it constitutes a limitation on access to BYX’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 BYX 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 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 [BYX’s] facilities,” *id.* § 78f(b)(4). 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. BYX has offered no evidence of such competitive forces. BYX 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 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 Chief ALJ, as has been done with other challenges.

Dated: April 13, 2015

Respectfully submitted,

SIDLEY AUSTIN LLP



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HL Rogers  
Eric D. McArthur  
Kathleen Hitchins  
Jeffrey J. Young  
Kevin P. Garvey  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
hrogers@sidley.com

W. Hardy Callcott  
555 California Street  
San Francisco, CA 94104  
(415) 772-7402

*Counsel for SIFMA*

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2015, I caused a copy of the foregoing Application For An Order Setting Aside Rule Changes Of BATS Y-Exchange, Inc. Limiting Access To Its 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.

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

Eric Swanson  
General Counsel and Secretary  
BATS Exchange, Inc.  
BATS Y Exchange, Inc.  
8050 Marshall Drive  
Lenexa, KS 66214

Dated: April 13, 2015



Eric D. McArthur