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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. 3-18010

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

Bloomberg L.P. (“BLP”) 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 a certain rule change (the “Rule Change”) unilaterally issued by the NASDAQ Stock Market LLC (the “SRO”), as listed in Exhibit A. The Rule Change limits the access of BLP and its customers to market data made available by the SRO and is inconsistent with the Act.

1. BLP is a global business and financial information and news leader, which provides real time market data, analytics, and news to more than 325,000 subscribers globally. Market data is important to the business of BLP and its customers. BLP and its customers regularly seek access to the market data that the SRO makes available.

2. The SRO 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 the SRO. 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. BLP has submitted other applications pursuant to Sections 19(d) and 19(f) challenging earlier rule changes by other 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 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).

4. The SEC should set aside the Rule Change because it constitutes a limitation on access to the SRO’s services for purposes of Sections 19(d) and 19(f). This is so because it limits access to

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: June 2, 2017

Respectfully submitted,

Sidley Austin LLP



Eric D. McArthur
Kevin P. Garvey
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
emcarthur@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	SR-NASDAQ-2017-041	34-80585	May 3, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 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

Dated: June 2, 2017



Eric D. McArthur