

As discussed above, one commenter asserts, among other concerns, that the Exchange's cost-based discussion is not sufficiently detailed to support its claims that the proposed Trading Rights Fee is consistent with the requirements of the Act, and that the Exchange has not offered sufficient detail to establish that the proposed fee would be constrained by significant competitive forces.⁶⁵ The commenter indicates that, among other things, additional information addressing both revenues and costs is lacking in the Exchange's proposal.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."⁶⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁶⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁶⁸

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.⁶⁹

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by October 24, 2019. Rebuttal comments should be submitted by November 7, 2019. Although there do not appear to

be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2019-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-013 and should be submitted on or before October 24, 2019. Rebuttal comments should be submitted by November 7, 2019.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁷¹ that File Number SR-CboeBYX-2019-013 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷²

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87150; File No. SR-NYSEArca-2013-107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Programs Until October 31, 2019

September 27, 2019.

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").² The limited exemption was granted concurrently with the Commission's

⁶⁵ See SIFMA Letter, *supra* note Error! Bookmark not defined., at 1-2.

⁶⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁶⁷ See *id.*

⁶⁸ See *id.*

⁶⁹ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁷⁰ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁷¹ 15 U.S.C. 78s(b)(3)(C).

⁷² 17 CFR 200.30-3(a)(57) and (58).

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107) ("Order").

approval of the Exchange's proposal to adopt its Program for a one-year pilot term.³ The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on September 30, 2019.⁴

³ See *id.*

⁴ On March 19, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR-NYSEArca-2015-22).

On September 17, 2015, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). On November 28, 2016, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63). On November 30, 2017, the Exchange requested another extension of the exemption to the program. See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. See Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR-NYSEArca-2017-137). On June 14, 2018, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018. The pilot period for the Program was extended until December 31, 2018. See Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR-NYSEArca-2018-46). On November 30, 2018, the Exchange requested another extension of the

The Exchange now seeks to extend the exemptions until October 31, 2019.⁵ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.⁶ In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its Retail Liquidity Program, until October 31, 2019.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated November 30, 2018. The pilot period for the Program was extended until June 30, 2019. See Securities Exchange Act Release No. 84773 (December 10, 2018), 83 FR 64419 (December 14, 2018) (SR-NYSEArca-2018-89). On June 19, 2019, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Vanessa Countryman, Secretary, Commission, dated June 19, 2019. The pilot period for the Program was extended until September 30, 2019. See Securities Exchange Act Release No. 86198 (June 26, 2019), 84 FR 31648 (July 2, 2019) (SR-NYSEArca-2019-45).

⁵ See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Vanessa Countryman, Secretary, Commission, dated September 26, 2019.

⁶ See SR-NYSEArca-2019-67.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Tuesday, October 8, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims;
- Regulatory matters regarding certain financial institutions; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

⁷ 17 CFR 200.30-3(a)(83).