

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96741; File No. SR-NYSEARCA-2023-06)

January 24, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 7.44-E Relating to the Retail Liquidity Program

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 10, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.44-E relating to the Retail Liquidity Program. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.44-E, which sets forth the Exchange’s Retail Liquidity Program (the “Program”).⁴ The purpose of the Program is to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. Rule 7.44-E currently provides for a class of market participant called Retail Liquidity Providers (“RLPs”) who, along with non-RLP ETP Holders, are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (“RPI Order”).⁵ When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.⁶ Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere,

⁴ The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63). In connection with the Commission’s approval of the Program on a pilot basis, the Commission granted the Exchange’s request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (the “Sub-Penny Rule”), which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

⁵ See Rules 7.44-E(a)(1) (defining an RLP) and 7.44-E(a)(4) (defining RPI Order).

⁶ See Rule 7.44-E(j).

depending on the Retail Order's instructions.⁷ The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. The Exchange recently modified the Program to be available for all securities traded on the Exchange.⁸

As described in further detail below, the Exchange now proposes to substantively amend the Program to (1) modify the Program to provide Retail Orders with price improvement at the midpoint or better by proposing that both RPI Orders and Retail Orders would function as Mid-Point Liquidity Orders ("MPL Orders") and (2) eliminate the role of RLPs.⁹

Proposed Midpoint Program

The Exchange proposes to modify the Program to provide Retail Orders with price improvement at the midpoint or better, which change the Exchange believes would further the purpose of the Program to offer price improvement opportunities to retail order flow. The Exchange believes that the proposed change would provide more deterministic price improvement opportunities for Retail Orders and could attract additional retail order flow to the Exchange.

⁷ See Rule 7.44-E(a)(2) (defining RMO); Rules 7.44-E(a)(3) and 7.44-E(k) (describing Retail Orders).

⁸ See Securities Exchange Act Release No. 96111 (October 20, 2022), 87 FR 64830 (October 26, 2022) (SR-NYSEARCA-2022-70) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.44-E).

⁹ The Exchange notes that, with the proposed modification of the Program to provide Retail Orders with price improvement at the midpoint or better, the Exchange would no longer accept and rank RPI Orders in increments smaller than \$0.01, as ordinarily prohibited by the Sub-Penny Rule. Accordingly, the operation of the Program, as proposed, would no longer be dependent on the exemptive relief from the Sub-Penny Rule previously granted by the Commission in connection with its original approval of the Program.

RPI Orders

Rule 7.44-E(a)(4) currently provides that an RPI Order consists of non-displayed interest that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such.¹⁰ RPI Orders are non-displayed and are ranked Priority 3 - Non-Display Orders.¹¹ Currently, Exchange systems monitor whether RPI buy or sell interest is eligible to trade with incoming Retail Orders, and an RPI Order to buy (sell) with a limit price at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will not be eligible to trade with incoming Retail Orders to sell (buy), and such an RPI will cancel if a Retail Order to sell (buy) trades with all displayed liquidity at the PBB (PBO) and then attempts to trade with the RPI. If not cancelled, an RPI to buy (sell) with a limit price that is no longer at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will again be eligible to trade with incoming Retail Orders.¹² An RPI Order may be an odd lot, round lot, or mixed lot, may be designated as either a Limit Non-Displayed Order or an MPL Order, and will not interact with Type 2 - Retail Orders resting on the NYSE Arca Book.¹³

To effect the proposed change that the Program would function to provide Retail Orders with price improvement at the midpoint or better, the Exchange proposes to modify RPI Orders to function only as MPL Orders. An MPL Order is defined in Rule 7.31-E(d)(3) as a Limit

¹⁰ Rule 7.44-E(a)(4)(C) currently provides that an RLP may only enter an RPI in its RLP capacity for securities to which it is assigned and is permitted, but not required, to submit RPIs for securities to which it is not assigned (and would be treated as a non-RLP ETP Holder with respect to those securities). As discussed below, the Exchange proposes to delete current Rule 7.44-E(a)(4)(C) in connection with the proposed elimination of the RLP function.

¹¹ See Rule 7.44-E(a)(4)(A).

¹² See Rule 7.44-E(a)(4)(B).

¹³ See Rule 7.44-E(a)(4)(D).

Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price.¹⁴ The Exchange believes that modifying RPI Orders to function as MPL Orders would increase the potential pool of midpoint-eligible liquidity with which a Retail Order could interact. In addition, because all RPI Orders would be priced at the midpoint, the Retail Liquidity Identifier would provide more deterministic information about the potential liquidity available to interact with Retail Orders at the midpoint.

To effect this change, the Exchange first proposes to modify current Rule 7.44-E(a)(4) (which, as discussed below, would be renumbered as 7.44-E(a)(3)) and to combine current Rule 7.44-E(a)(4)(A) into new Rule 7.44-E(a)(3), with non-substantive changes to improve the clarity of the rule text. Rule 7.44-E(a)(3), as proposed, would thus define an RPI Order as an MPL Order that is eligible to trade only with incoming Retail Orders submitted by an RMO. The Exchange also proposes to add text to new Rule 7.44-E(a)(3) to clarify that an RPI Order may not be designated IOC, ALO, or with a Minimum Trade Size (“MTS”) Modifier.¹⁵ In addition,

¹⁴ An MPL Order may be entered during any Exchange trading session, is ranked Priority 3 - Non-Display Orders, and does not participate in auctions. See Rule 7.31-E(d)(3). An MPL Order to buy (sell) must be designated with a limit price in the minimum price variation for the security and will be eligible to trade at its working price. See Rule 7.31-E(d)(3)(A). If there is no PBB or PBO, or if the PBBO is locked or crossed, an arriving or resting MPL Order will not be eligible to trade until the PBBO is not locked or crossed. See Rule 7.31-E(d)(3)(B). An Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order. See Rule 7.31-E(d)(3)(C).

¹⁵ See Rules 7.31-E(b)(2) (providing that an order with an IOC Modifier will be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, with any untraded quantity cancelled); 7.31-E(e)(2) (providing that an ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the NYSE Arca Book); 7.31-E(i)(3) (providing that the MTS Modifier designates an order with a minimum trade size and an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order).

the Exchange proposes to delete current Rules 7.44-E(a)(4)(B) and 7.44-E(a)(4)(D) because the text of those rules would no longer be necessary.¹⁶ Specifically, the provisions of Rule 7.44-E(a)(4)(B) would no longer apply in light of the Exchange's proposal to modify RPI Orders to function as MPL Orders and the provisions of Rule 7.44-E(a)(4)(D) are either duplicative of proposed Rule 7.44-E(a)(3) (as renumbered) or no longer applicable based on the proposed elimination Type 2 Retail Orders (as further discussed below).¹⁷

The Exchange also proposes to modify current Rule 7.44-E(j) (to be renumbered as Rule 7.44-E(e), as discussed below), which describes the Retail Liquidity Identifier that is currently disseminated via the Consolidated Quotation System or the UTP Quote Data Feed, as applicable, when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems. Consistent with the proposed change to modify RPI Orders to operate as MPL Orders only, the Exchange proposes that new Rule 7.44-E(e) would provide that the Retail Liquidity Identifier would be disseminated when RPI interest is eligible to trade at the midpoint of the PBBO. The dissemination of the Retail Liquidity Identifier would thus alert RMOs to the availability of trading opportunities at the midpoint of the PBBO.

Retail Orders

Current Rule 7.44-E(a)(3), which as described below would be renumbered as Rule 7.44-E(a)(2), defines a Retail Order as an agency order or a riskless principal order that meets the

¹⁶ The proposed deletion of Rule 7.44-E(a)(4)(C) is discussed below in connection with the proposed elimination of RLPs.

¹⁷ The Exchange also proposes to delete text in Rule 7.44-E(a)(4)(D) providing that an RPI Order may be an odd lot, round lot, or mixed lot as extraneous, because Exchange rules provide that orders are accepted in any size unless otherwise provided. See Rule 7.38-E(a). The Exchange further proposes a conforming change to Rule 7.38-E(a) to delete its reference to Rule 7.44-E, as Rule 7.44-E does not specify that an order may not be entered as an odd lot or mixed lot.

criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Current Rule 7.44-E(a)(3) also provides that a Retail Order will operate in accordance with Rule 7.44-E(k) and may be an odd lot, round lot, or mixed lot.¹⁸

Rule 7.44-E(k) currently describes how RMOs can designate how a Retail Order would interact with available contra-side interest and provides for Type 1 - Retail Orders and Type 2 - Retail Orders. Type 1 - Retail Orders are Limit IOC Orders to buy (sell) that will trade only with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1 - Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. Type 2 - Retail Orders may be Limit Orders designated IOC or Day or Market Orders. A Type 2 - Retail Order IOC is a Limit IOC Order to buy (sell) that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to sell (buy) on the NYSE Arca Book at prices equal to or above (below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route. A Type 2 - Retail Order Day is a Limit Order to buy (sell) that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route,

¹⁸ Consistent with the proposed change to Rule 7.44-E(a)(4)(D) regarding odd lots, round lots, or mixed lots, see id., the Exchange also proposes to delete the similar provision in current Rule 7.44-E(a)(3) for the same reasons.

and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order. Finally, a Type 2 - Retail Order Market is a Market Order that will trade first with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.

To effect the change that Retail Orders in the Program would be eligible to trade at the midpoint or better, the Exchange proposes to amend Rule 7.44-E(k) (which is proposed to be renumbered as Rule 7.44-E(f)). In new Rule 7.44-E(f), the Exchange proposes to both rename the section “Retail Order Operation” rather than “Retail Order Designation” and reflect the Exchange’s proposal to offer only one type of Retail Order, which, as noted above, would function as an MPL Order.¹⁹ The Exchange proposes to delete text in current Rule 7.44-E(k) providing that an RMO may designate how a Retail Order would trade with contra-side interest, as such text would no longer apply with only one type of Retail Order. The Exchange also proposes to move text in current Rule 7.44-E(k)(1) into new Rule 7.44-E(f) and to modify the description of a Type 1 Retail Order in current Rule 7.44-E(k)(1) to describe the only Retail Order that would be available, as proposed.

New Rule 7.44-E(f) would thus provide that a Retail Order to buy (sell) would be an MPL IOC Order with a working price at the lower (higher) of the midpoint of the PBBO or its limit price and that will trade only with available RPI Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) or equal to the midpoint of the PBBO on the NYSE Arca Book and will not route. New Rule 7.44-E(f) would also continue to provide that the quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. The Exchange proposes to delete references to

¹⁹ See note 14, supra and accompanying text.

Type 1 Retail Orders in current Rule 7.44-E(k)(1), as the proposed change would result in only one type of Retail Order. The Exchange also proposes to update the remainder of current Rule 7.44-E(k)(1) such that new Rule 7.44-E(f) would provide that the quantity of a Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be rejected on arrival if there is no PBBO or the PBBO is locked or crossed. The Exchange believes this proposed change would simplify the Program by offering only one type of Retail Order and, similar to the proposed change to RPI Orders, would modify the Program to provide price improvement opportunities for Retail Orders priced at the midpoint or better.

The Exchange further proposes to add new text to new Rule 7.44-E(f) to provide additional options to ETP Holders with respect to Retail Orders. First, the Exchange proposes to add text to new Rule 7.44-E(f) providing that a Retail Order may be designated with an MTS Modifier, at the ETP Holder's option.²⁰ The Exchange also proposes to add text to new Rule 7.44-E(f) to introduce a new "No Retail Modifier" for use at an ETP Holder's discretion. Proposed Rule 7.44-E(f) would provide that the No Retail Modifier is available for use with MPL Orders and MPL-ALO Orders only, and orders designated with the No Retail Modifier would not trade with Retail Orders.²¹ Specifically, as proposed, an incoming Retail Order would not interact with an MPL Order or MPL-ALO Order designated with the No Retail Modifier and

²⁰ Consistent with this proposed change, the Exchange proposes to delete text in Rule 7.44-E(k) currently providing that a Retail Order may not be designated with a minimum trade size.

²¹ The Exchange also proposes to modify Rule 7.31-E(d)(3), which defines MPL Orders, to add new subparagraph (G) regarding the No Retail Modifier. Subparagraph (G) would, consistent with the proposed addition to new Rule 7.44-E(f), provide that MPL Orders and MPL-ALO Orders may be designated with a No Retail Modifier and that orders so designated would not trade with Retail Orders. The Exchange proposes to offer the No Retail Modifier to provide ETP Holders with the ability to designate their MPL Orders and MPL-ALO Orders to not interact with Retail Orders, which some ETP Holders may choose to do based on their desired trading strategy.

may trade through such MPL Order or MPL-ALO Order.

The Exchange also proposes to delete current Rule 7.44-E(k)(2), which currently describes Type 2 Retail Orders, as such order types would no longer be offered, as proposed.²²

Finally, the Exchange proposes to modify Rule 7.44-E(1) (proposed to be renumbered as Rule 7.44-E(g)), which currently describes priority and order allocation of RPI Orders and Retail Orders, to reflect the changes described above. Under current Rule 7.44-E(1), RPI Orders in the same security will be ranked together with all other interest ranked as Priority 3 - Non-Display Orders. Odd-lot orders ranked as Priority 2 - Display Orders will have priority over orders ranked Priority 3 - Non-Display Orders at each price. Any remaining unexecuted RPI interest will remain available to trade with other incoming Retail Orders. Currently, any remaining unfilled quantity of the Retail Order will cancel, execute, or post to the NYSE Arca Book in accordance with Rule 7.44-E(k).

The Exchange proposes to delete text from the last sentence of the first paragraph under current Rule 7.44-E(1) referring to an unfilled quantity of a Retail Order executing or posting to the NYSE Arca Book. The Exchange proposes to eliminate this text because Retail Orders would, as proposed, function as IOC orders only, and any remaining unfilled quantity of a Retail Order would thus be cancelled. The Exchange also proposes to delete the examples currently provided in Rule 7.44-E(1) to illustrate priority and order allocation of RPI Orders and Retail Orders. With the changes proposed in this filing to modify RPI Orders and Retail Orders to function only as MPL Orders and to offer only one type of Retail Order, RPI Orders and Retail

²² The Exchange also proposes a conforming change in the final paragraph of new Rule 7.44-E(g) to reflect the proposed elimination of Type 2 Retail Orders. The Exchange proposes to delete the second sentence in the final paragraph of current Rule 7.44-E(1), which relates to Type 2 Market Retail Orders, as such rule text would no longer have application following the elimination of Type 2 Retail Orders.

Orders would simply trade according to price/time priority as described in Rule 7.36-E. The Exchange thus believes that new Rule 7.44-E(g) clearly describes the ranking and priority of RPI Orders and Retail Orders and that no examples are needed to further illustrate how such orders would trade. The Exchange believes that removing unnecessary examples from current Rule 7.44-E(l) would improve the clarity of the rule.

Proposed Elimination of Retail Liquidity Providers

NYSE Arca Rules 7.44-E(a)(1), 7.44-E(a)(4)(C), and 7.44-E(c) through (i) currently set forth rules pertaining to RLPs:

- Rule 7.44-E(a)(1) provides that RLPs are ETP Holders that are approved by the Exchange and required to submit RPIs.
- Rule 7.44-E(a)(4)(C) describes how RLPs may enter RPIs for their assigned and non-assigned securities.
- Rule 7.44-E(c) describes how an ETP Holder may qualify to become an RLP.
- Rule 7.44-E(d) sets forth the process by which an ETP Holder may apply to become an RLP, subject to the Exchange's approval of such application.
- Rule 7.44-E(e) provides for an RLP's voluntary withdrawal from RLP status.
- Rule 7.44-E(f) sets forth an RLP's obligations with respect to entering RPIs.
- Rule 7.44-E(g) describes action the Exchange may take with respect to an RLP that fails to meet the requirements of Rule 7.44-E.
- Rule 7.44-E(i) describes the process through which an ETP Holder may appeal the Exchange's decision to disapprove or disqualify it as an RLP.

The Exchange proposes to modify the Program to eliminate the role of RLPs, as there are no ETP Holders currently registered as RLPs. Accordingly, the Exchange does not believe that

modifying Rule 7.44-E to remove text providing for the RLP function would impact the effectiveness of the Program and notes that other exchanges currently operate retail price improvement programs that do not include an RLP function.²³ To effect this change, the Exchange proposes to delete Rules 7.44-E(a)(1), 7.44-E(a)(4)(C), and 7.44-E(c) through (g) in their entirety and to modify Rule 7.44-E(i) to remove text relating to the disapproval or disqualification of an RLP.²⁴ The Exchange also proposes to renumber current Rules 7.44-E(a)(2) through (4) as Rules 7.44-E(a)(1) through (3) to reflect the deletion of current Rule 7.44-E(a)(1) and to renumber Rules 7.44-E(h) through (l) as Rules 7.44-E(c) through (g) to reflect the proposed deletion of current Rules 7.44-E(c) through (g).²⁵ The Exchange believes that the proposed change would simplify and add clarity to its Rules by removing the description of an unutilized aspect of the Program.

Subject to approval of this proposed rule change, the Exchange will implement this

²³ See, e.g., Investors Exchange LLC (“IEX”) Rule 11.232 (describing IEX Retail Price Improvement Program); Nasdaq BX, Inc. (“Nasdaq BX”) Rule 4780 (describing Nasdaq BX Retail Price Improvement Program).

²⁴ In Rule 7.44-E(i) (which is proposed to be renumbered as Rule 7.44-E(d)), the Exchange proposes to delete references to Rules 7.44-E(d) and 7.44-E(g), which currently provide for the process by which an ETP Holder may apply to become an RLP and actions the Exchange may take with respect to an RLP that fails to meet the requirements of Rule 7.44-E, respectively. The Exchange also proposes a conforming change to replace the reference to Rule 7.44-E(h) with a reference to Rule 7.44-E(c) to reflect the proposed renumbering of Rules 7.44-E(h) through (l). The Exchange also proposes to delete current Rule 7.44-E(i)(1)(A) (which describes the reassignment of securities from an RLP that has been disqualified) because the rule would no longer have application. The Exchange further proposes to delete the defined term “appellant” in current Rule 7.44-E(i)(1), as such term would no longer be used following the elimination of Rule 7.44-E(i)(1)(A).

²⁵ The Exchange also proposes conforming changes to renumbered Rules 7.44-E(a)(2) (Retail Order) and 7.44-E(g) (Priority and Order Allocation) to update references to Rule 7.44-E(k) to refer instead to Rule 7.44-E(f), to account for the proposed renumbering described above in connection with the elimination of RLPs.

change no later than in the second quarter of 2023 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5),²⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed changes to both Retail Orders and RPI Orders in the Program would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because modifying RPI Orders and Retail Orders to function as MPL Orders would further the purpose of the Program by providing Retail Orders with price improvement opportunities at the midpoint or better. The Exchange believes that providing more deterministic price improvement opportunities for Retail Orders would attract additional retail order flow to the Exchange. The Exchange also believes that the proposed change to the Program would allow it to compete with other exchanges that operate retail price improvement programs that are priced at the midpoint.²⁸ The Exchange believes that the proposed change to streamline how Retail Orders function would

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ See, e.g., IEX Rule 11.232 (providing for Retail Price Improvement Program with Retail Order defined as a Discretionary Peg order or Midpoint Peg order with a Time-in-Force of IOC or FOK, that is only eligible to trade at a price between the NBB and the Midpoint Price (for bids) or between the NBO and the Midpoint Price (for offers)).

also promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system by simplifying the operation of the Program.

The Exchange also believes that the proposed change to eliminate RLPs as a class under the Program would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because there are no ETP Holders currently registered as RLPs and, accordingly, deleting rule text providing for RLPs would not have any impact on any existing ETP Holders. Moreover, because any ETP Holder may enter RPI Orders, eliminating RLPs as a class would not impact the ability of ETP Holders to enter RPI Orders on the Exchange. The Exchange further notes that other exchanges currently operate retail price improvement programs that do not include RLPs.²⁹

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change could promote competition by modifying RPI Orders and Retail Orders to function as MPL Orders, thereby encouraging additional trading opportunities at the midpoint and supporting price improvement opportunities at the midpoint of the PBBO or better for retail investors. The Exchange also believes that the proposed change to eliminate the RLP function would not impose any burden on competition, as no ETP Holders are currently registered as RLPs. The Exchange further believes that the proposed change could promote competition between the Exchange and other exchanges that offer retail price

²⁹ See note 23, supra.

improvement programs, including an exchange that operates a retail price improvement program intended to provide additional trading opportunities at the midpoint.³⁰

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2023-06 on the subject line.

³⁰ See note 28, *supra*; see also, e.g., Nasdaq BX Rule 4780 (describing BX’s Retail Price Improvement Program); Cboe BYX Exchange, Inc. (“BYX”) Rule 11.24 (describing BYX’s Retail Price Improvement Program).

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-NYSEARCA-2023-06. This file number should be included on the subject line if e-mail 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-NYSEARCA-2023-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,
Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).