

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78340 / July 15, 2016

Admin. Proc. File No. 3-17189

In the Matter of the Petition of

CITADEL SECURITIES LLC, RONIN
CAPITAL, LLC, SUSQUEHANNA
INVESTMENT GROUP, and
SUSQUEHANNA SECURITIES

OPINION AND ORDER DISMISSING
PETITION FOR ADMINISTRATIVE
REMEDY

Petition filed: March 2, 2016
Last brief received: April 22, 2016

Citadel Securities LLC, Ronin Capital, LLC, Susquehanna Investment Group, and Susquehanna Securities (collectively, the “Market Makers”) have filed a petition (the “Petition”) requesting that we order the Chicago Board Options Exchange, Inc., International Securities Exchange, LLC, NASDAQ OMX PHLX, NYSE Arca, Inc., and NYSE MKT LLC (collectively, the “Exchanges”) to pay damages to the Market Makers in an amount equal to marketing fees that, they claim, the Market Makers were improperly charged pursuant to the Exchanges’ Payment for Order Flow (“PFOF”) programs.¹ Alternatively, the Market Makers request that we order the Exchanges to disgorge the fees. As discussed below, we dismiss the Petition based on a lack of jurisdiction.

I. Background

This matter concerns marketing fees (the “Marketing Fees”) that the Exchanges assessed over several years in connection with their PFOF programs. According to the Market Makers,² although firm and market maker orders were generally not “eligible” for Marketing Fees,

¹ “PFOF is an arrangement by which a broker receives payment from a market maker in exchange for sending order flow to them. These fees are imposed to attract order flow to a market, thereby increasing liquidity in that market.” *Citadel Sec., LLC, v. Chicago Bd. Options Exch., Inc.*, 808 F.3d 694, 697 (7th Cir. 2015).

² Petitioners “operate as ‘market makers’ under the exchanges’ rules,” and thus “compete for customer order flow by displaying buy and sell quotations for particular stocks.” *Citadel*, 808 F.3d at 697.

“multiple Exchange member firms submitted to the Exchanges millions of orders for their proprietary and market maker accounts that were misidentified as customer orders.”³ As a result, the Market Makers allege, they “were wrongly charged . . . potentially millions of dollars” in Marketing Fees for those orders, in violation of the Exchanges’ own rules.

According to the Market Makers, the improper assessment of Marketing Fees “became known in late 2012” based on the announcement of disciplinary actions that the Exchanges had taken against a member firm as a result of the member’s miscoding of orders. The next year, the Market Makers requested that the Exchanges provide a full accounting and reimbursement of improperly charged Marketing Fees. When the Exchanges refused the requests, the Market Makers filed suit against the Exchanges.⁴ The lawsuit, however, was dismissed based on the district court’s determination that the Market Makers had failed to exhaust possible administrative remedies. In affirming that decision, the Seventh Circuit held that the Market Makers had “not clearly shown that the [Commission]’s administrative procedure is futile or inadequate to prevent irreparable injury.”⁵ The court reasoned that “[w]hile there is no obvious [administrative] path to the monetary compensation plaintiffs seek, it is impossible to say whether relief is available since plaintiffs have made no attempt to bring the matter before the [Commission].”⁶ The court opined that, “[i]n its current form, the Exchange Act provides a range of administrative remedies for those aggrieved by an exchange’s action,” and after citing several statutory provisions, concluded that “monetary compensation [through the administrative process] is at least a possibility.”⁷ Thereafter, the Market Makers filed the Petition.⁸

II. Analysis

The Market Makers identify no basis for Commission jurisdiction over the claims in their lawsuit against the Exchanges. Indeed, they expressly state that “[t]he Commission does not have jurisdiction over the Market Makers’ Petition pursuant to its Rules of Practice” and that, as a result, “the Commission has no statutory authority to exercise jurisdiction over this matter.”

³ The Market Makers assert that, “[b]ecause the primary purpose of the Exchange PFOF Programs was to attract order flow from public customers to the Exchanges, customer orders generally were the only orders included in the Exchange PFOF Programs.” *See also Citadel*, 808 F.3d at 697 (“[T]hese [marketing] fees are not imposed for proprietary ‘house trades,’ where a firm trades on its own behalf.”).

⁴ The suit was initially filed in the Circuit Court of Cook County, Illinois and subsequently removed to federal court.

⁵ *Citadel*, 808 F.3d at 700.

⁶ *Id.*

⁷ *Id.* at 700-01.

⁸ We subsequently directed the parties to file briefs addressing our jurisdiction to consider the Petition, which we considered in issuing this order. *See Citadel Sec. LLC*, Exchange Act Release No. 77501, 2016 WL 1272874, at *1 (Apr. 1, 2016).

The Market Makers request that, if “the Commission is unable or unwilling to provide” the requested relief, it “provide the Market Makers with a written denial of their request for administrative relief as soon as possible” so that they may preserve and pursue their judicial remedies.

The Exchanges, on the other hand, assert that we have jurisdiction under Exchange Act Section 19(h)(1), which authorizes us to institute proceedings to determine whether a self-regulatory organization (“SRO”), such as the Exchanges, “has violated . . . any provision of . . . its own rules” and to take appropriate remedial action in response.⁹ They further argue that we may institute a proceeding based on an allegation of such a violation.¹⁰

The Seventh Circuit concluded that “the plain language of the Exchange Act calls for SEC review of plaintiffs’ allegations of improper PFOF fees.”¹¹ In this opinion we explain why: (1) Exchange Act Section 19(d) (and Rule of Practice 420), which permit an aggrieved person to seek review of an SRO decision that prohibits or limits access to services offered by the SRO or a member of it;¹² (2) Exchange Act Section 19(h)(1), which authorizes us to institute proceedings based on allegations that an SRO has violated its own rules;¹³ and (3) the statutory provisions the Seventh Circuit referenced in its opinion do not authorize us to exercise jurisdiction over the Petition.

A. Prohibition or limitation of access under Exchange Act Section 19(d)

Exchange Act Section 19(d) authorizes the Commission to review, among other things, action by an SRO, like the Exchanges, that “prohibits or limits any person in respect to access to services offered by such organization or [a] member” of it.¹⁴ Commission Rule of Practice

⁹ 15 U.S.C. § 78s(h)(1).

¹⁰ Although they argue that the Commission has jurisdiction, the Exchanges maintain that the Petition “lacks merit and can be disposed of by motions to dismiss.”

¹¹ *Citadel*, 808 F.3d at 699 (referring to text of Section 19(h)(1)).

¹² 15 U.S.C. § 78s(d); 17 C.F.R. § 201.420(a)(iii) (authorizing filing of application for review by a person aggrieved by an SRO’s “prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof”); *see also* Rule 101(a)(9)(iii), 17 C.F.R. § 201.101(a)(9)(iii) (defining proceeding to include “any agency process initiated . . . by the filing, pursuant to Rule 420, of an application for review of a self-regulatory organization determination”).

¹³ 15 U.S.C. § 78s(h)(1); *see also* Rule 101(a)(9)(i), 17 C.F.R. § 201.101(a)(9)(i) (proceeding includes “any agency process initiated . . . by an order instituting proceedings”); Rule 101(a)(7), 17 C.F.R. § 201.101(a)(7) (defining “order instituting proceedings [as] an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing”).

¹⁴ 15 U.S.C. § 78s(d).

101(a)(9)(iii) provides that a proceeding may be “initiated . . . by the filing, pursuant to Rule of Practice 420, of an application for review of [an SRO] determination.”¹⁵ Under Rule 420(a)(iii), an aggrieved person may file an application for review of, an SRO’s limitation or prohibition of access to services.¹⁶ This rule implements Exchange Act Section 19(d).¹⁷

The Petition is not an application for review of an SRO determination under Section 19(d) or Rule 420. The Petition does not allege that the Exchanges have denied or limited the Market Makers’ access to any service that the Exchanges offer.¹⁸ Although the Petition alleges that the Market Makers traded on the Exchanges, the Market Makers do not allege that they were

¹⁵ 17 C.F.R. § 201.101(a)(9)(iii). None of the other provisions of Rule 101(a)(9), which defines “proceeding,” references a statutory or regulatory source of jurisdiction over the Petition. The Market Makers did not file “a petition for review of an initial decision by a hearing officer” under Rule 410; “a notice of intention to file a petition for review of a determination made pursuant to delegated authority” under Rule 430; “an application for review of a determination by the Public Company Accounting Oversight Board” under Rule 440; “an application for review of an action or failure to act in connection with the implementation or operation of any effective transaction reporting plan” under Regulation NMS, Rule 601(e), 17 C.F.R. § 242.601(e) (formerly 17 C.F.R. § 240.11Aa3-1(f)); “an application for review of an action taken or failure to act in connection with the implementation or operation of any effective national market system plan” under Regulation NMS, Rule 608(d), 17 C.F.R. § 242.608(d) (formerly 17 C.F.R. § 240.11Aa3-2(e)); or “an application for review of a determination of a registered securities information processor” under Exchange Act Section 11A(b)(5), 15 U.S.C. § 78k-1(b)(5). *See* 17 C.F.R. § 201.101(a)(9)(ii), (iv)-(viii).

¹⁶ 17 C.F.R. § 201.420(a)(iii). Neither side suggests, and we conclude, that the Petition is not an application for review of any of the other types of SRO actions reviewable under Section 19(d).

¹⁷ *See* 15 U.S.C § 78s(d) (authorizing an aggrieved person to file an application for review of an SRO decision that “prohibits or limits any person in respect to access to services offered by such organization or member thereof”); *see also Rules of Practice*, Exchange Act Release No. 35833 (June 9, 1995), 60 Fed. Reg. 32,738, 32,775 (June 23, 1995) (“Rule 420 (a) and (b) are based in part on Exchange Act Section 19(d)(2), 15 U.S.C § 78s(d)(2).”).

¹⁸ Indeed, the Market Makers do not seek relief under Rule 420 or Section 19(d) and expressly deny that the Rules of Practice authorize the relief they seek. We will not exercise jurisdiction on a basis the Market Makers disclaim. *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 809 n.6 (1986) (“Jurisdiction may not be sustained on a theory that the plaintiff has not advanced.”).

limited or prohibited access to those services.¹⁹ Rather, the Petition alleges, in effect, a billing dispute, not a limitation or denial of access to the Exchanges' services.²⁰

The Petition also alleges that the Exchanges failed to provide an accounting and a refund that the Market Makers requested from them after learning of the incorrect order coding, but this is not a limitation of access claim either. "In those cases in which we have found a denial of access, an SRO had denied or limited the applicant's ability to utilize one of the fundamentally

¹⁹ Cf. *Bloomberg, L.P.*, Exchange Act Release No. 49076, 57 SEC 265, 2004 WL 67566, at *2 (Jan. 14, 2004) (finding that NYSE's "imposition and enforcement of" certain restrictions relating to the dissemination of depth-of-book data "effected a denial of access to Bloomberg" of services because NYSE "would not provide Bloomberg access to [that] data unless it disseminated and continue[d] to disseminate" it in accordance with the restrictions); *Tower Trading, L.P.*, Exchange Act Release No. 47537, 56 SEC 270, 2003 WL 1339179, at *5 (Mar. 19, 2003) (concluding that "Tower's loss of its guaranteed participation fundamentally altered its access to services offered by CBOE"); *Scattered Corp.*, Exchange Act Release No. 37249, 52 SEC 812, 1996 WL 284622, at *2 (May 29, 1996) (finding that "the Exchange's determination not to process Scattered's application for registration as a market maker limits the firm's access to the CHX's services."); *William J. Higgins*, Exchange Act Release No. 24429, 48 SEC 713, 1987 WL 757509, at *5 (May 6, 1987) (concluding that "denial of a member's request to be permitted to communicate from the Exchange floor with non-members located off-floor would constitute a prohibition of, or limitation on, access to services").

²⁰ "[N]ot every fee charged by an SRO will constitute a reviewable limitation on access." *Sec. Indus. & Fin. Mkts. Ass'n*, Exchange Act Release No. 72182, 2014 WL 1998525, at *8 (May 16, 2014). In *SIFMA*, an industry trade group challenged SRO rule changes affecting fees charged for non-core market data, claiming that they constituted limitations on access. We held there that the challenged fees could constitute such limitations—and provide a basis for Commission review—if, among other things, evidence showed that trade group members were aggrieved because "the level of the [resulting] prices charged . . . is so high as to be outside a reasonable range of fees under the Exchange Act." *Id.* at *8; see also *id.* at *7-9 (stating additional jurisdictional requirements, including with respect to associational standing). We held that the trade group needed to allege that the prices at issue were not merely too high but "contrary to the Exchange Act," *id.* at *9, and that the SRO services implicated in the application "were not merely important to the applicant but were central to the function of the SRO." *Id.* (citations omitted). The parties do not assert, nor do we find that the Petition, alleges these elements.

important services offered by the SRO.”²¹ “Such services must be ‘central to the function of the SRO,’ such as access to an exchange trading floor or registration as a market maker.”²² The Exchanges’ refusal to provide the accounting and refund that the Market Makers seek is not a denial or limitation of access reviewable under that standard.

Second, the Petition seeks relief that is incongruous with, and exceeds our remedial authority to address, a claim of improper limitation or prohibition of access. When an SRO fails to justify a limitation or prohibition of access to services,²³ we must “set aside the action of the self-regulatory organization and require it to . . . grant [the applicant] access to services offered by the self-regulatory organization or member thereof.”²⁴ We do not have authority to award

²¹ *Morgan Stanley & Co.*, Exchange Act Release No. 39459, 53 SEC 379, 1997 WL 802072, at *3 (Dec. 17, 1997); *see also Matthew Brian Proman*, Exchange Act Release No. 57740, 2008 WL 1902072, at *2 (Apr. 30, 2008) (finding that relevant standard was not satisfied when Proman failed to identify any services “‘central to the function of the SRO,’ such as access to an exchange trading floor or registration as a market maker” to which he had been denied access); *Sky Capital LLC*, Exchange Act Release No. 55828, 90 SEC 1942, 2007 WL 1559228, at *4 (May 30, 2007) (finding that *Morgan Stanley* test was not met when applicant failed to show that NASD “Office of the Ombudsman provide[d] a ‘fundamentally important service’ that [wa]s central to the function of NASD”).

²² *Proman*, 2008 WL 1902072, at *2 (quoting *Morgan Stanley*, 1997 WL 802072, at *3); *see also Joseph Dillon & Co.*, Exchange Act Release No. 43523, 54 SEC 960, 2000 WL 1664016, at *3 (Nov. 6, 2000) (“The NASD’s action also does not constitute a denial of membership or a denial of access to services. The operation of [NASD] Rule [of Conduct 3010(b)(2)] and the NASD’s exemption denial have no bearing on Dillon’s membership in the NASD, which continues unchanged whether or not an exemption is granted.”).

²³ A Section 19(d) prohibition or limitation of access claim is reviewed pursuant to the standard set forth in Section 19(f). We must set aside the prohibition or limitation unless we find that: “[1] that the specific grounds on which such . . . prohibition or limitation is based exist in fact, [2] that such . . . prohibition or limitation is in accordance with the rules of the self-regulatory organization, and [3] that such rules are, and were applied in a manner, consistent with the purposes of” the Exchange Act. 15 U.S.C. § 78s(f). We may also set aside a prohibition or limitation of access if we find that it “imposes any burden on competition not necessary or appropriate in furtherance of the purposes of” the Exchange Act. *Id.*

²⁴ Exchange Act Section 19(f), 15 U.S.C. § 78s(f).

damages under Section 19(f).²⁵ As an alternative to damages, the Market Makers suggest we should create a “Fair Fund”—into which the Exchanges could pay the relevant Marketing Fees at issue, and from which the Market Makers could be compensated.²⁶ A Fair Fund may not be created in connection with a proceeding brought pursuant to Section 19(d). Our rules authorize a Fair Fund only when we have ordered the payment of both disgorgement and civil money penalties,²⁷ and those remedies are not available in a proceeding brought under Exchange Act Section 19(d).²⁸

Third, even if the Petition were cognizable under Section 19(d), it would be untimely. “[A] party that chooses to appeal an SRO action pursuant to Section 19(d)(2) must file an application for review with the Commission within thirty days after receiving notice of the action.”²⁹ The Market Makers identify no SRO action that took place within the 30 days before

²⁵ See *MFS Sec. Corp.*, Exchange Act Release No. 47626, 2003 WL 1751581, at *6 n.33 (Apr. 3, 2003) (“MFS asks for damages, but we do not have the power to make such an award.”), *aff’d*, 380 F.3d 611 (2d Cir. 2004); *Beatrice J. Feins*, Exchange Act Release No. 33374, 51 SEC 918, 1993 WL 538913, at *3 n.14 (Dec. 23, 1993) (“We are not authorized under statute to award damages”); see also *Marshall Fin., Inc.*, Exchange Act Release No. 50343, 57 SEC 869, 2004 WL 2026518, at *3 & n.21 (Sept. 10, 2004) (“Exchange Act Section 19 does not appear to authorize the setting aside of [the SRO’s] Fees assessment or authorize ‘remission’ of the Fees.”).

²⁶ See Rule of Practice 1100, 17 C.F.R. § 201.1100 (authorizing the creation of Fair Funds in certain administrative proceedings); see also 15 U.S.C. § 7246(a) (authorizing “in any judicial or administrative action brought by the Commission under the securities laws” civil penalties to “be added to . . . a disgorgement fund or other fund established for the benefit of . . . victims”).

²⁷ See Rule of Practice 1100, 17 C.F.R. § 201.1100 (limiting scope of rule to “any agency process initiated by an order instituting proceedings in which the Commission or the hearing officer issues an order requiring the payment of disgorgement by a respondent and also assessing a civil money penalty against that respondent”).

²⁸ See *supra* text accompanying note 24.

²⁹ *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 WL 6044106, at *3 & n.12 (Nov. 15, 2013).

the Petition was filed,³⁰ and the Market Makers did not request any extension of time to file an application for review of any earlier SRO action.³¹

B. Disciplinary proceeding under Exchange Act Section 19(h)(1)

The Seventh Circuit concluded that Exchange Act Section 19(h)(1) provides the Commission with “jurisdiction [that] covers claims against an SRO for violating its own rules,”³² and the Commission must therefore have jurisdiction over the claims raised by the Market Makers. But that provision, which authorizes us to institute proceedings against an exchange for rule violations, applies only when, “in [our] opinion” regulatory action against the exchange “is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes” of the Exchange Act.³³

Section 19(h)(1) does not authorize claims by private parties against SROs. Unlike Section 19(d), which authorizes an aggrieved person to initiate an administrative review proceeding by filing an application for review,³⁴ Section 19(h)(1) exclusively authorizes “the appropriate regulatory authority,” *i.e.*, the Commission, in its discretion, to commence an administrative disciplinary action against an SRO.³⁵ Were we to commence a litigated proceeding under Section 19(h)(1), that litigation would not be an adversarial proceeding between the Market Makers and the Exchanges. The parties to the proceeding would be the Exchanges and our Division of Enforcement, which would pursue claims against them, and the case initiating document would be our order instituting proceedings, not the Petition that the

³⁰ The only SRO action mentioned in the papers is the March 5, 2013 statement denying responsibility for any losses that the Market Makers may have suffered as a result of improper order marking. The Market Makers did not challenge that action and do not ask us to construe the Petition as a challenge to the decision made nearly three years ago. Even if they did so, it is too late to challenge such a decision before the Commission.

³¹ See *Orbixa Techs.*, 2013 WL 6044106, at *3-4, *5 (dismissing application for review as untimely where it did not challenge any SRO action within 30 days of filing of the application or present “extraordinary circumstances” to extend filing deadline). Rule 420(b), which provides the “exclusive” procedure for seeking an extension of the filing deadline, mandates that an extension will be granted only on a showing of “extraordinary circumstances.” No such showing was made here.

³² *Citadel*, 808 F.3d at 700 (quotations omitted).

³³ 15 U.S.C. § 78s(h)(1).

³⁴ See *supra* notes 15-17 and accompanying text.

³⁵ See 15 U.S.C. § 78s(h)(1); *cf. Marketlines, Inc. v. SEC*, 384 F.2d 264, 267 (2d Cir. 1967) (“In charging the Commission with the enforcement of the [Investment Advisers] Act ‘in the public interest,’ Congress necessarily gave it a broad discretion.”) (citing *Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963) (same as to Securities Act)).

Market Makers have filed.³⁶ Thus, the Seventh Circuit’s statement that that “the regulatory or private nature of the action does not determine the SEC’s jurisdictional reach,”³⁷ does not comport with Section 19(h)(1), which does not provide for Commission jurisdiction over lawsuits initiated by and between private parties.

In any event, as the Seventh Circuit acknowledged, Section 19(h)(1) contains “no mention of damages or restitution.”³⁸ That is precisely the remedy the Petition seeks and which the Commission may not provide the Market Makers. Section 19(h)(1) authorizes us, among other remedial action, only to suspend and/or impose limitations upon an SRO found in violation, not to award damages.³⁹

C. Statutory provisions identified by the Seventh Circuit

1. Availability to obtain “monetary compensation”

The Seventh Circuit suggested that the Market Makers’ claims could be heard by the Commission because the “Exchange Act provides a range of administrative remedies for those aggrieved by an exchange’s action,” and “sections of the Exchange Act explicitly provide for monetary penalties.”⁴⁰ In its view, through the Commission, “monetary compensation is at least

³⁶ Compare Rule of Practice 200, 17 C.F.R. § 201.200 (governing initiation of proceedings by order instituting proceedings) with Rule 420, 17 C.F.R. § 201.420 (governing application for review filed to commence SRO review proceeding). Our Rules of Practice significantly limit the ability of third parties, such as the Market Makers would be, to participate in disciplinary proceedings, such as those under Section 19(h)(1). See Rule of Practice 210(a)(1), 17 C.F.R. § 201.210(a)(1) (providing that, subject to certain exceptions, “[n]o person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding”).

³⁷ *Citadel*, 808 F.3d at 700.

³⁸ *Id.* at 701.

³⁹ See 15 U.S.C. § 78s(h)(1) (authorizing, on an appropriate showing, the Commission “to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of” an SRO).

⁴⁰ *Citadel*, 808 F.3d at 700-01.

a possibility.”⁴¹ That the Commission may impose civil penalties and seek disgorgement does not mean that we may provide “monetary compensation” to the Market Makers.⁴²

The Court’s opinion cited to Exchange Act Section 21B,⁴³ which authorizes us to impose civil money penalties in “any proceeding instituted pursuant to [Exchange Act] [S]ections 15(b)(4), 15(b)(6), 15D, 15B, 15C, 15E, or 17A.”⁴⁴ The Petition does not initiate a proceeding under any of these provisions. Sections 15(b)(4) and (6) authorize the Commission to institute disciplinary proceedings against brokers and dealers and persons associated with them.⁴⁵ Sections 15D, 15B, 15C, 15E, and 17A address, respectively, matters relating to securities analysts and research reports;⁴⁶ municipal securities dealers and municipal advisors;⁴⁷ government securities brokers and dealers;⁴⁸ nationally recognized statistical rating organizations;⁴⁹ and the national system for clearance and settlement of securities transactions.⁵⁰ These provisions do not apply to the Market Makers and Exchanges’ fee dispute.

Moreover, the civil money penalties that the Commission is authorized to seek under Section 21B are not damages. Damages are “[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury.”⁵¹ “[C]ivil penalties go beyond compensation, are intended to punish, and label defendants wrongdoers.”⁵² Civil penalties also differ from

⁴¹ *Id.* at 701.

⁴² In *Sky Capital*, for example, the Petition asked that the “Commission award the firm at least \$300 million in damages and penalties” for what it alleged was a “campaign of harassment” by the NASD. We noted there, as we do here, that “we do not have the authority to order such relief.” 2007 WL 1559228, at *3 n.11.

⁴³ 15 U.S.C. § 78u-2.

⁴⁴ 15 U.S.C. § 78u-2(a)(1).

⁴⁵ 15 U.S.C. § 78o(b)(4) and (6).

⁴⁶ 15 U.S.C. § 78o-6.

⁴⁷ 15 U.S.C. § 78o-4.

⁴⁸ 15 U.S.C. § 78o-5.

⁴⁹ 15 U.S.C. § 78o-7.

⁵⁰ 15 U.S.C. § 78q-1.

⁵¹ *Black’s Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS.

⁵² *Gabelli v. SEC*, 133 S. Ct. 1216, 1218 (2013).

disgorgement, which “serves to remedy securities law violations by depriving violators of the fruits of their illegal conduct” and “does not serve a punitive function.”⁵³

The Seventh Circuit also cited Exchange Act Section 21(d)(3), as “giv[ing] the [Commission] general authority to pursue monetary penalties in civil actions.”⁵⁴ That provision, like Section 21B, applies only in a proceeding commenced by the Commission and does not authorize the award of damages.

2. Jurisdiction over rule challenges

Although SRO fee rules may be subject to challenge under Section 19(d), the Petition does not challenge the existence of the rules imposing the Marketing Fees. That the fees at issue were imposed pursuant to rules subject to Commission review does not make the Commission the arbiter of any and all disputes about such fees or rules.⁵⁵ A challenge to the implementation or application of a rule must fall within a grant of jurisdiction provided to the Commission under the Exchange Act. That the lawsuit involves a rule or SRO subject to Commission review does not automatically mean jurisdiction exists. “SRO action is not reviewable merely because it adversely affects the applicant.”⁵⁶ As explained above, the Petition does not satisfy any of the bases under the Exchange Act for the Commission to exercise jurisdiction.⁵⁷

⁵³ See *SEC v. Contorinis*, 743 F.3d 296, 301 (2d Cir. 2014). Unlike damages, which compensate injured parties for the harm they have suffered, disgorgement “deprives wrongdoers of the profits obtained from their violations.” See *Zacharias v. SEC*, 569 F.3d 458, 472 (D.C. Cir. 2009).

⁵⁴ *Citadel*, 808 F.3d at 701 (citing 15 U.S.C. § 78u(d)(3)).

⁵⁵ *Citadel*, 808 F.3d at 699.

⁵⁶ *Proman*, 2008 WL 1902072, at *2; see also *Morgan Stanley*, 1997 WL 802072, at *4 (finding that allegation that SRO action “had a negative impact on . . . firm’s business” is not sufficient to establish Commission jurisdiction).

⁵⁷ “Because we lack review jurisdiction, we do not consider the merits of [the Market Makers’] allegations of rule violations” by the Exchanges. See *Russell A. Simpson*, Exchange Act Release No. 40690, 53 SEC at 1048 n.13 (Nov. 19, 1998).

Accordingly, IT IS ORDERED that the Petition for Administrative Remedy of Citadel Securities LLC, Ronin Capital, LLC, Susquehanna Investment Group, and Susquehanna Securities is DISMISSED.⁵⁸

By the Commission.

Brent J. Fields
Secretary

⁵⁸ We have considered all the arguments for and against jurisdiction advanced in the briefs. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein. We express no view on the merits of the Market Makers' claims or whether those claims are cognizable in an action not before the Commission.