

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85168; File No. SR-NYSEAMER-2019-01)

February 20, 2019

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31E Relating to the Minimum Trade Size Modifier

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on February 11, 2019, NYSE American LLC (the “Exchange” or “NYSE American”) 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 7.31E relating to the Minimum Trade Size Modifier. 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 places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 7.31E relating to the Minimum Trade Size (“MTS”) Modifier.

The MTS Modifier is currently available for Limit IOC Orders,⁴ Midpoint-Liquidity (“MPL”) Orders,⁵ Tracking Orders,⁶ Non-Displayed Primary Pegged Orders,⁷ and Discretionary Pegged Orders.⁸ As such, the MTS Modifier is currently available only for orders that are not displayed and do not route. On arrival, Limit IOC Orders, MPL Orders, Non-Displayed Primary Pegged Orders, and Discretionary Pegged Orders with an MTS Modifier will trade against contra-side orders in the Exchange Book that in the aggregate or individually, meet the MTS.⁹ Once resting, MPL Orders, Tracking Orders, Non-Displayed Primary Pegged Orders, and

⁴ See Rule 7.31E(b)(2)(A). In sum, a Limit Order designated IOC is to be traded in whole or in part on the Exchange as soon as such order is received, and the quantity not so traded is cancelled. Id.

⁵ See Rule 7.31E(d)(3). In sum, an MPL Order is a “Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO.” Id.

⁶ See Rule 7.31E(d)(4). In sum, a Tracking Order is an order to buy (sell) with a limit price that is not displayed, does not route, must be entered in round lots and designated Day, and will trade only with an order to sell (buy) that is eligible to route.

⁷ See Rule 7.31E(h)(2). In sum, a Non-Displayed Pegged Order is a Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed. All Pegged Orders are not displayed and do not route. See Rule 7.31E(h).

⁸ See Rule 7.31E(h)(3). In sum, a Discretionary Pegged Order is a Pegged Order to buy (sell) that upon entry to the Exchange is assigned a working price equal to the lower (higher) of the midpoint of the PBBO (“Midpoint Price”) or the limit price of the order. All Pegged Orders are not displayed and do not route. See Rule 7.31E(h).

⁹ Tracking Orders, including Tracking Orders with an MTS Modifier, are passive orders that do not trade on arrival.

Discretionary Pegged Orders with an MTS Modifier function similarly: if a contra-side order does not meet the MTS, the incoming order will not trade with and may trade through the resting order with the MTS Modifier. In addition, MPL Orders, Tracking Orders, Non-Displayed Primary Pegged Orders, and Discretionary Pegged Orders with an MTS Modifier will be cancelled if such orders are traded in part or reduced in size and the remaining quantity is less than the MTS.

First, the Exchange proposes to amend its rules to make MTS Modifier functionality available for an additional non-displayed order that does not route, i.e., Non-Displayed Limit Orders.¹⁰ This proposed change is based on the rules of both the Nasdaq Stock Market LLC (“Nasdaq”) and Investors Exchange LLC (“IEX”), which both offer minimum trade size functionality for orders that are not displayed and that do not route.¹¹

Second, the Exchange proposes to allow ETP Holder to elect that Limit IOC Orders with an MTS Modifier trade on arrival against contra-side orders in the Exchange Book that individually meet such order’s MTS. Rule 7.31E(i)(3)(B) requires an ETP Holder to specify whether an order with an MTS Modifier would trade on arrival against contra-side orders in the Exchange Book that in the aggregate or individually meet such order’s MTS. Currently, an ETP Holder cannot elect that a Limit IOC Order with an MTS Modifier trade only with individual

¹⁰ See Rule 7.31E(d)(2). In sum, A Non-Displayed Limit Order is a Limit Order that is not displayed and does not route. *Id.* The Exchange understands that its affiliated exchanges, the New York Stock Exchange, Inc. (“NYSE”), NYSE National, Inc. (“NYSE National”), and NYSE Arca, Inc. (“NYSE Arca”, together with the Exchange, NYSE National and NYSE, the “Affiliate SROs”) have either filed or intend to file similar proposes rule changes with the Commission to extend the availability of their respective MTS Modifiers to Non-Displayed Limit Orders. See SR-NYSE-2019-01 (filed for immediate effectiveness on January 28, 2019) and SR-NYSEArca-2019-03 (filed for immediate effectiveness on January 28, 2019).

¹¹ See Nasdaq Rule 4703(e) (Nasdaq’s “Minimum Quantity Order” may not be displayed and will be rejected if it includes an instruction to route) and IEX Rule 11.190(b)(11)(A) (IEX’s “Minimum Quantity Order” or “MQTY” is a non-displayed, non-routable order”).

order(s) in the Exchange Book that each meets such order's MTS. The Exchange proposes to remove this restriction from Rule 7.31E(i)(3)(B)(ii).

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Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. The Exchange anticipates that the implementation date will be in the second quarter of 2019.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹² in general, and furthers the objectives of Section 6(b)(5),¹³ 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 proposal to expand the availability of the Exchange's existing MTS Modifier to an additional non-displayed, non-routable order, e.g., Non-Displayed Limit Orders, would 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, because the proposed rule change is based on similar minimum trade size functionality on Nasdaq and IEX, which both similarly make minimum trade size functionality available to non-displayed, non-routable orders.¹⁴

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See supra note 11.

The Exchange also believes that the proposal to allow ETP Holder to elect that Limit IOC Orders with an MTS Modifier trade on arrival against contra-side orders in the Exchange Book that individually meet such order's MTS would 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, because the proposed rule change would provide ETP Holders greater control over the execution of their Limit IOC Orders. The Exchange did not previously support functionality that permitted Limit IOC Orders with an MTS Modifier to trade against individual orders that each meet such order's MTS. The Exchange has since made the necessary technology changes and, therefore, proposes to remove this restriction from Rule 7.31E(i)(3)(B)(ii) as it is no longer necessary. Furthermore, the Exchange's affiliates, NYSE and NYSE Arca recently filed proposed rule changes with the Commission to modify their respective MTS Modifiers to align with that of NYSE American and allow orders with an MTS Modifier to execute against individual orders that each meet the incoming order's MTS and the NYSE and NYSE Arca proposals did not include a similar restriction on Limit IOC Orders.¹⁵ The Exchange notes that similar minimum trade size functionality on Nasdaq and IEX does not prohibit Limit IOC Orders with an MTS Modifier from being able to execute only against individual orders that meet the order's MTS.

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 rule change is designed to increase competition by making available on the Exchange functionality that is already available on Nasdaq and IEX. The

¹⁵ See supra note 10.

Exchange also believes that the proposed rule change would promote competition by providing market participants with an additional venue to which to route non-displayed, non-routable orders with an MTS Modifier.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or 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-NYSEAMER-2019-01 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-NYSEAMER-2019-01. 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,

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-NYSEAMER-2019-01 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.²⁰

Eduardo A. Aleman
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).