SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100633; File No. SR-NYSENAT-2024-22)

August 1, 2024

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Rule 7.31

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 July 25, 2024, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 modify Rule 7.31 regarding MPL-ALO Orders. 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 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.

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 7.31 regarding MPL-ALO Orders.

Rule 7.31(d)(3) defines a Mid-Point Liquidity Order ("MPL Order") as a Limit 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. An MPL Order is ranked Priority 3 - Non-Display Orders and is valid for any session.

Rule 7.31(d)(3)(A) provides that an MPL Order to buy (sell) must be designated with a limit price in the MPV for the security and will be eligible to trade at the working price of the order.

Rule 7.31(d)(3)(B) provides that if there is no PBB, PBO, or the PBBO is locked or crossed, both an arriving and resting MPL Order will wait for a PBBO that is not locked or crossed before being eligible to trade. If a resting MPL Order to buy (sell) trades with an MPL Order to sell (buy) after there is an unlocked or uncrossed PBBO, the MPL Order with the later working time will be the liquidity-removing order.

Rule 7.31(d)(3)(C) provides that 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.

Rule 7.31(d)(3)(D) provides that an MPL Order may be designated IOC ("MPL-IOC Order"). Subject to such IOC instructions, an MPL-IOC Order will follow the same trading and priority rules as an MPL Order, expect that an MPL-IOC Order will be rejected if there is no

PBBO or the PBBO is locked or crossed. An MPL-IOC Order cannot be designated ALO or with a Non-Display Remove Modifier.

Rule 7.31(d)(3)(E) and the subparagraphs thereunder define the MPL-ALO Order, which is an MPL Order designated with an ALO Modifier.[4] An Aggressing[5] MPL-ALO Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL-ALO Order, but will not trade with resting orders to sell (buy) priced equal to the less aggressive of the midpoint of the PBBO or the limit price of the MPL-ALO Order (Rule 7.31(d)(3)(E)(i)). If an MPL-ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy), a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL-ALO Order will trade ahead of a resting order to sell (buy) that is not displayed at that price; if such resting order to sell (buy) is displayed, the MPL-ALO Order to buy (sell) will not be eligible to trade at that price (Rule 7.31(d)(3)(E)(ii)). An MPL-ALO Order may not be designated with a Non-Display Remove Modifier (Rule 7.31(d)(3)(E)(iii)).

*Proposed Rule Change*

Currently, Aggressing MPL-ALO Orders to buy (sell) may trade with resting orders priced below (above) the less aggressive of the midpoint of the PBBO or the limit price of the MPL-ALO Order (i.e., priced below (above) the MPL-ALO Order's working price), regardless of the amount of price improvement the Aggressing MPL-ALO Order would receive. The Exchange proposes to amend Rule 7.31(d)(3)(E)(i) to provide that an Aggressing MPL-ALO

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4 An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book. See NYSE National Rule 7.31(e)(2).

5 An "Aggressing Order" is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages. See Rule 7.36(a)(5).

Order would only be eligible to trade with resting orders when it would receive price improvement over the MPL-ALO Order's working price of at least one MPV. This proposed change would not impact non-Aggressing MPL-ALO Orders (e.g., MPL-ALO Orders resting on the Exchange Book). A non-Aggressing MPL-ALO Order would continue to provide liquidity at its working price unless it would not be eligible to trade as outlined in Rules 7.31(d)(3)(E)(ii)(a) and (b), as amended below.

The Exchange next proposes to amend Rule 7.31(d)(3)(E)(ii) to provide that an MPL-ALO Order not eligible to trade as described in proposed Rule 7.31(d)(3)(E)(i) would be ranked in the Exchange Book at its working price and would not trade at that price if it would lock or cross displayed interest or cross non-displayed interest on the Exchange Book. Specifically, the Exchange proposes to add new Rules 7.31(d)(3)(E)(ii)(a) and (b) to provide that resting MPL-ALO Orders would not be eligible to trade (a) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of the MPL-ALO Order, or (b) at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of the MPL-ALO Order. The Exchange notes that the circumstances under which such orders would not be able to trade are consistent with the Exchange's existing priority and ranking rules.

The Exchange further proposes to renumber current Rule 7.31(d)(3)(E)(ii) as Rule 7.31(d)(3)(E)(iii) and to amend the text of the rule to provide that if an MPL-ALO Order to buy (sell) cannot trade with a same-priced resting order to sell (buy) that is not displayed, a subsequently arriving order to sell (buy) eligible to trade at the working price of the MPL-ALO Order will trade ahead of such resting order to sell (buy). This proposed change is not intended to change the meaning of the rule, but rather to clarify that, if an MPL-ALO Order is resting at

the same price as resting non-displayed interest, a subsequently arriving order that is eligible to trade with that MPL-ALO Order would, as currently, be permitted to trade ahead of such interest. The Exchange further proposes to delete the last sentence of current Rule 7.31(d)(3)(E)(ii), which provides that an MPL-ALO Order would not be eligible to trade at the price of a displayed resting order to buy (sell), as duplicative of proposed Rule 7.31(d)(3)(E)(ii)(a) described above.

The following example demonstrates how an arriving Aggressing MPL-ALO Order would trade or be ranked on the Exchange Book, as proposed:

- Assume the PBBO[6] is $10.00 x $10.05 (midpoint is $10.025). On the Exchange Book, there is a Limit Order to sell 90 shares at $10.02 ("Order 1") and an MPL Order to sell 100 shares at $10.00 ("Order 2"). Order 1 is displayed at its working price of $10.02. Order 2 is non-displayed and has a working price at the midpoint, $10.025.
- Order 3 is an incoming MPL-ALO Order to buy 100 shares at $10.05. Order 3, as an Aggressing MPL-ALO Order, would not trade with either Order 1 or Order 2 because it would receive less than $0.01 price improvement over the midpoint. Pursuant to proposed Rule 7.31(d)(3)(E)(ii), Order 3 would be ranked on the Exchange Book at its working price, $10.025 (which is the midpoint, as the working price of an MPL-ALO Order to buy is the lower of the midpoint or the order's limit price).
- Order 4 is an incoming MPL-IOC Order to sell 100 shares at $10.00. Order 4 would not trade with Order 3 (which is now ranked on the Exchange Book at its

6 "Best Protected Bid" or "PBB" means the highest Protected Bid, "Best Protected Offer" or "PBO" means the lowest Protected Offer, and "Protected Best Bid and Offer" or "PBBO" means the Best Protected Bid and the Best Protected Offer, as those terms are defined in Rule 600(b)(57) of Regulation NMS. See Rule 1.1(t).

working price) at $10.025 per proposed Rule 7.31(d)(3)(E)(ii)(a) because an execution at that price would be at a price above displayed interest on the Exchange Book (Order 1 at $10.02). Order 4, as an IOC Order, would be cancelled because it does not execute.

- Assume Order 1 is cancelled, and Order 5 is an incoming MPL-IOC Order to sell 100 shares at $10.00. Order 5 would trade with Order 3 (where Order 3 is the liquidity provider) at $10.025, consistent with proposed Rule 7.31(d)(3)(E)(iii), because the trade would execute at a price that is not above the price of any displayed or non-displayed interest on the Exchange Book, although it would be at the same price as Order 2 (non-displayed interest on the Exchange Book).[7]

The following example demonstrates how an MPL-ALO Order that is resting on the Exchange Book and subsequently becomes an Aggressing MPL-ALO Order (in this example, when the PBBO is updated) would trade, as proposed:

- Assume the PBBO is $10.00 x $10.05 (midpoint is $10.025). Order 1 is a non-displayed Limit Order to sell 100 shares at $10.03, resting on the Exchange Book at its working price of $10.03. Order 2 is an MPL-ALO Order to buy 100 shares at $10.05. Order 2 is resting non-displayed on the Exchange Book at its working price of $10.025 (which is the midpoint, as the working price of an MPL-ALO Order to buy is the lower of the midpoint or the order's limit price).
- Assume the PBBO updates to $10.03 x $10.05 (midpoint is $10.04). Order 2 reprices to the new midpoint, $10.04, and becomes an Aggressing Order because

[7] As noted above, Rule 7.31(d)(3)(E)(iii), as amended, reflects current Rule 7.31(d)(3)(E)(ii), which provides that an MPL-ALO Order that is resting at the same price as resting non-displayed interest would be permitted to trade with a subsequently arriving order that is eligible to trade with that MPL-ALO Order, ahead of the non-displayed interest.

its working price has changed and the PBBO has updated. Order 2 will trade as an Aggressing Order (as the liquidity taker) with Order 1 at $10.03 because it would receive $0.01 price improvement over its working price.

Finally, the Exchange proposes to renumber current Rule 7.31(d)(3)(E)(iii) as Rule 7.31(d)(3)(E)(iv) to reflect the addition of the new rule text described above, without any changes to the text of the rule.

The Exchange believes that the proposed change, which would allow an Aggressing MPL-ALO Order to trade only when it would receive price improvement over its working price of at least one MPV, would promote higher-quality executions for ETP Holders and provide ETP Holders with greater certainty regarding the amount of price improvement such executions would receive, thereby encouraging increased order flow to the Exchange and enhanced opportunities for order execution for all market participants. The Exchange notes that evaluating the economic benefit of an execution is not a novel concept on equity exchanges.[8] Accordingly, the Exchange believes that this proposed change, which would consider the amount of price improvement that an Aggressing MPL-ALO Order would receive upon execution, would offer ETP Holders a similar benefit to that available on at least one other equity exchange for an order type similar to the MPL-ALO Order and could thus promote competition among equity exchanges.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

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[8] See, e.g., Nasdaq Stock Market LLC, Equity 4, Rule 4702(b)(5)(A) (defining the Midpoint Peg Post-Only Order, which is priced at the midpoint between the NBBO and will execute upon entry only in circumstances where economically beneficial to the party entering such order).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] 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 change 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 allowing an Aggressing MPL-ALO Order to trade only when it would receive price improvement over its working price of at least one MPV would promote higher-quality executions for ETP Holders, thereby encouraging increased order flow to the Exchange and enhanced trading opportunities for all market participants. The Exchange also believes that the proposed conforming changes to Rule 7.31(d)(3)(E) would 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 by clarifying how Aggressing MPL-ALO Orders that would not be eligible to trade based on the amount of price improvement would be ranked and would trade once resting, in accordance with the Exchange's priority and ranking rules. Finally, the Exchange notes that considering the economic benefit of an execution is not a novel concept and believes that this proposed change would remove impediments to, and perfect the mechanism of,

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

a free and open market and a national market system by providing ETP Holders with greater certainty as to the amount of price improvement they would receive when an Aggressing MPL-ALO Order executes, as well as by promoting competition among equity exchanges.[11]

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 proposed rule change would amend Exchange rules to permit Aggressing MPL-ALO Orders to trade only when they would receive price improvement of at least one MPV over their working price, thereby providing a minimum amount of price improvement for ETP Holders entering such orders. To the extent the proposed rule change promotes higher-quality executions on the Exchange, the proposed change could encourage increased order flow to the Exchange and facilitate additional trading opportunities for all market participants. In addition, at least one other equity exchange considers the economic benefit to the entering party when evaluating whether a similar order type may trade, and the Exchange's proposal would thus promote competition among exchanges by providing a minimum amount of price improvement to Aggressing MPL-ALO Orders.[12] The Exchange also believes that, to the extent the proposed change would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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.

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11 See note 8, supra.

12 See note 8, supra.

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

Because the foregoing 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b-4(f)(6)[14] thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange to implement the proposed change as soon as the associated technology is available, which is anticipated to be less than 30 days from the date of this filing. The Exchange believes the proposed change would provide member organizations with greater certainty regarding the amount of price improvement their Aggressing MPL-ALO Orders would receive, thereby promoting higher-quality executions and encouraging increased order flow to the Exchange for the benefit of all market participants.

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13 15 U.S.C. 78s(b)(3)(A).

14 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

15 17 CFR 240.19b-4(f)(6).

16 17 CFR 240.19b-4(f)(6)(iii).

For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the 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 Commission shall institute proceedings to determine whether the proposed rule 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2024-22 on the subject line.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSENAT-2024-22. 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 (https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSENAT-2024-22 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary*.

[18] 17 CFR 200.30-3(a)(12).