

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98891; File No. SR-NYSE-2023-40)

November 8, 2023

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 October 31, 2023, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 7.31 to provide for the use of ALO Reserve 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

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 7.31 to provide for the use of ALO Reserve Orders.

ALO Orders

Rule 7.31(e)(2) defines an ALO Order as a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book. An ALO Order can be designated to be cancelled if it would be displayed at a price other than its limit price for any reason. An ALO Order can be designated as non-displayed.

As described in Rule 7.31(e)(2)(A), an Aggressing ALO Order to buy (sell) will trade if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the Exchange Book priced equal to or below (above) the PBO (PBB) of an Away Market, in which case it will trade as the liquidity taker with such orders.

As noted above, Rule 7.31(e)(2) provides that an ALO Order may be designated to cancel if it would be displayed at a price other than its limit price. If an ALO Order is not so designated, any untraded quantity of such order to buy (sell) is processed as follows (Rules 7.31(e)(2)(B)(i) and (ii)):

- If the limit price of the ALO Order locks the display price of any order to sell (buy) ranked Priority 2 - Display Orders on the Exchange Book, it will have a working price and display price (if designated to display) one MPV below (above) the price of the displayed order on the Exchange Book.

- If the limit price of the ALO Order locks or crosses the PBO (PBB) of an Away Market, it will have a working price equal to the PBO (PBB) of the Away Market and a display price (if designated to display) one MPV below (above) the PBO (PBB) of the Away Market.

Rule 7.31(e)(2)(C) provides that any untraded quantity of an ALO Order to buy (sell) will have a working price and display price (if designated to display) equal to its limit price if it locks non-displayed orders to sell (buy) on the Exchange Book. Rule 7.31(e)(2)(D) provides that an ALO Order to buy (sell) will not be assigned a working price or display price above (below) the limit price of such order.

Once resting on the Exchange Book, ALO Orders may be re-priced or trade, or both, as described in Rule 7.31(e)(2)(E):

- If order(s) to sell (buy) ranked Priority 2 - Display Orders or the PBO (PBB) of an Away Market re-prices higher (lower), an ALO Order to buy (sell) will trade or be priced, or both, consistent with Rules 7.31(e)(2)(A), (e)(2)(B)(i) and (ii), and (e)(2)(C).
- If the PBO (PBB) of an Away Market re-prices lower (higher) to be equal to or lower (higher) than its last display price or if its limit price no longer locks or crosses the PBO (PBB) of the Away Market, an ALO Order to buy (sell) will be priced pursuant to Rules 7.31(e)(1)(A)(ii)(c) and (d). If the PBO (PBB) of an Away Market re-prices lower (higher) than the working price of a non-displayed ALO Order to buy (sell), such order will have a working price equal to the PBO (PBB) of the Away Market.

Reserve Orders

Rule 7.31(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (“reserve interest”) of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2 - Display Orders, and the reserve interest is ranked Priority 3 - Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31(d)(2)(A).

As described in Rule 7.31(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different time is referred to as a “child” order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a D Order, Non-Routable Limit Order, or Primary Pegged Order. Rule 7.31(d)(1)(C) also currently provides that a Reserve Order may not be designated as an ALO Order.

Rule 7.31(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31(e)(1) relating to Non-Routable Limit Orders.

ALO Reserve Orders

The Exchange proposes to amend Rule 7.31 to provide for the use of ALO Reserve Orders. The proposed change is not intended to introduce any new functionality or modify any current functionality, but rather to facilitate the combination of two order types currently offered by the Exchange. As proposed, ALO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31(d)(1) regarding Reserve Orders and current Rule 7.31(e)(2) regarding ALO Orders. To allow for the use of ALO Reserve Orders, the Exchange first

proposes to amend Rule 7.31(d)(1)(C) to delete the last sentence of such rule, which currently provides that a Reserve Order may not be designated as an ALO Order.

The proposed change is intended to allow ALO Orders, as described in Rule 7.31(e)(2) and the paragraphs thereunder,⁴ to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31(d)(1). The display quantity of an ALO Reserve Order would be replenished as provided in Rules 7.31(d)(1)(A) and (B). As ALO Reserve Orders are non-routable, under Rule 7.31(d)(1)(B)(ii), the replenish quantity of an ALO Reserve Order would be assigned a display price and working price consistent with the behavior of ALO Orders as described in current Exchange rules.

Aggressing ALO Reserve Orders would trade in accordance with current Rule 7.31(e)(2)(A). If an ALO Reserve Order is designated to cancel, it will cancel if it would be displayed at a price other than its limit price for any reason, as described in Rule 7.31(e)(2). Otherwise, any untraded quantity of an ALO Reserve Order would continue to be processed as ALO Orders are currently, as described in Rules 7.31(e)(2)(B) and (C). Similarly, the working price of the reserve interest of a resting ALO Reserve Order would be adjusted as provided for in Rule 7.31(d)(1) (i.e., in accordance with Rule 7.31(d)(2)(A)). Rule 7.31(d)(1)(E) would also apply to requests to reduce the size of ALO Reserve Orders.

As described in Rule 7.31(d)(1)(F), when the PBBO is crossed and the display quantity of an ALO Reserve Order to buy (sell) is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a

⁴ The Exchange does not propose to allow non-displayed ALO Orders to be designated as Reserve Orders, given that a Reserve Order must have both displayed and non-displayed portions, and thus proposes to amend Rule 7.31(e)(2) to specify accordingly.

working price equal to the PBO (PBB). The Exchange proposes to amend Rule 7.31(d)(1)(F) to add new rule text describing how the display price and working price of an ALO Reserve Order would be adjusted when a previously crossed PBBO uncrosses. Specifically, the Exchange proposes to add text to the last sentence of Rule 7.31(d)(1)(F) providing that the display price and working price of an ALO Reserve Order would be adjusted in accordance with Rule 7.31(e)(2)(E), which describes how ALO Orders resting on the Exchange Book are repriced and/or traded. Because ALO Orders behave differently from other Non-Routable Limit Orders and may only trade when they receive price improvement, the Exchange proposes to add text to Rule 7.31(e)(2)(F) clarifying that ALO Reserve Orders would have their display price and working price adjusted consistent with the rules applicable to ALO Orders when the PBBO uncrosses.

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing member organizations with enhanced flexibility and optionality when trading on the Exchange. The proposed change could also promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality already available on at least one other equities exchange, thereby promoting competition among equities exchanges.⁵

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 in the fourth quarter of 2023.

⁵ See, e.g., MEMX Rules 11.8(b)(4) and (7) (providing that a Limit Order may include a reserve quantity and may be designated with a Post Only instruction); see also MEMX User Manual, available at <https://info.memxtrading.com/wp-content/uploads/2023/03/MEMX-User-Manual-03.10.23.pdf>, at 9 (providing that a Limit Order designated Day may have both reserve quantity and Post Only instructions).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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 rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already available on at least one other equities exchange.⁸ Member organizations would be free to choose to use the proposed ALO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or ALO Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to member organizations when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See note 5, supra.

addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange⁹ and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases 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.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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.¹²

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

⁹ See *id.*

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii). 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 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.

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 under Section 19(b)(2)(B)¹³ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2023-40 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-NYSE-2023-40. 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

¹³ 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2023-40 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.¹⁴

Sherry R. Haywood,

Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).