

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99663; File No. SR-NYSE-2024-11)

March 4, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; 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 February 26, 2024, 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 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 modify Rule 7.31 regarding Discretionary Orders and Primary Pegged 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 regarding Discretionary Orders (“D Orders”) and Primary Pegged Orders.

D Orders

Rule 7.31(d)(4) defines a D Order as a Limit Order that may trade at an undisplayed discretionary price. A D Order must be designated Day, may be designated as routable or non-routable, and on entry, must have a minimum of one round lot displayed. D Orders are available only to Floor Brokers and are eligible to be traded in the Core Trading Session only.

Rule 7.31(d)(4)(A) and subparagraphs (i) and (ii) thereunder provide that, on arrival, a Floor Broker must specify that a D Order be a Limit Price D Order or Midpoint Price D Order.⁴ Rule 7.31(d)(4)(B) provides that the working and display price of a D Order to buy (sell) will be pegged to the PBB (PBO). If the PBB (PBO) is higher (lower) than the limit price of a D Order to buy (sell), the working and display price will be the limit price of the order. A D Order to buy (sell) will be cancelled if there is no PBB (PBO) against which to peg. At its display price, a D Order is ranked Priority 2 - Display Orders. As set forth in Rule 7.31(d)(4)(B)(i), if after arrival,

⁴ On arrival, a Limit Price D Order to buy (sell) will trade with sell (buy) orders on the Exchange Book or, if designated as routable, route to an Away Market, up (down) to the limit price of the order. If after trading and routing the PBBO is locked or crossed or there is no PBB (PBO), a Limit Price D Order will be cancelled. For a Limit Price D Order that is partially routed to an Away Market on arrival, any returned quantity of such D Order will join the working price of the resting odd-lot quantity of the D Order. See Rule 7.31(d)(4)(A)(i). On arrival, a Midpoint Price D Order to buy (sell) will trade with sell (buy) orders on the Exchange Book up (down) to the lower (higher) of the midpoint of the PBBO (“Midpoint Price”) or the limit price of the order. A Midpoint Price D Order will not route on arrival, even if designated as routable. If the PBBO is locked or crossed or if the Midpoint Price is unavailable, a Midpoint Price D Order will be rejected. See Rule 7.31(d)(4)(A)(ii).

the PBBO becomes locked or crossed, a D Order will wait for a PBBO that is not locked or crossed before the display and working price are adjusted and remains eligible to trade at its current working price.

A resting D Order to buy (sell) is eligible to exercise discretion up (down) to the limit price of the order, as described in Rule 7.31(d)(4)(C). A D Order will not exercise discretion if the PBBO is locked or crossed or if there is no Midpoint Price. Rule 7.31(d)(4)(C)(i) further provides that a D Order to buy (sell) will be triggered to exercise discretion if the price of an Aggressing Order to sell (buy) is above (below) the PBB (PBO) and at or below (above) the Midpoint Price (the “discretionary price range”). Rule 7.31(d)(4)(C)(ii) provides that the discretionary price at which a D Order to buy (sell) will trade will be the price of the sell (buy) order, provided that, if there is other interest to buy (sell) on the Exchange Book priced equal to or higher (lower) than the price of the sell (buy) order, the discretionary price will be one MPV higher (lower) than the highest (lowest) priced resting order to buy (sell), capped by the Midpoint Price.

Rule 7.31(d)(4)(D) and subparagraphs (i) through (iii) thereunder describe a D Order’s ranking and working time. The trigger to exercise discretion does not change the working time of a D Order’s display and working price. At the discretionary price, a D Order will be assigned a new temporary working time that is later than any same-side resting interest at that price. Multiple D Orders eligible to trade at the same discretionary price will be ranked by limit price and time. Any quantity of a D Order that does not execute at a discretionary price will return to the working time associated with its working and display price.

Rule 7.31(d)(4)(E) provides that, after the PBBO unlocks or uncrosses or a Midpoint Price becomes accessible, resting D Orders to buy (sell) will be ranked based on the lower (higher) of the Midpoint Price or limit price of the order to determine whether such D Order is marketable within the discretionary price range with contra-side orders on the Exchange Book.

Finally, as provided in Rule 7.31(d)(4)(F), a D Order may be designated with an STPN or STPO modifier and will be rejected if combined with any other modifiers or if the same-side PBBO is zero.

Primary Pegged Orders

Rule 7.31(h) defines a Pegged Order as a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order. Pegged Orders are available only to Floor brokers.

Rule 7.31(h)(2) defines a Primary Pegged Order as a Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed. A Primary Pegged Order to buy (sell) will be rejected on arrival, or cancelled when resting, if there is no PBB (PBO) against which to peg. A Primary Pegged Order is eligible to participate in opening and reopening auctions at the limit price of the order but may not participate in the Closing Auction.

Rule 7.31(h)(2)(A) currently provides that a Primary Pegged Order must include a minimum of one round lot displayed. Rule 7.31(h)(2)(A) further provides that the working price of a Primary Pegged Order equals the display price, the display quantity is ranked Priority 2 - Display Orders, and the reserve interest is ranked Priority 3 - Non-Display Orders.

Rule 7.31(h)(2)(B) provides that a Primary Pegged Order will be rejected if the PBBO is locked or crossed. If the PBBO is locked or crossed when the display quantity of a Primary

Pegged Reserve Order is replenished, the entire order will be cancelled. If after arrival, the PBBO becomes locked or crossed, the Primary Pegged Order will wait for a PBBO that is not locked or crossed before the display and working price are adjusted and remains eligible to trade at its current working price.

Proposed Rule Change

The Exchange proposes to modify Rule 7.31(d)(4) relating to D Orders and Rule 7.31(h)(2)(A) relating to Primary Pegged Orders to allow such orders to be entered in any size. Specifically, the Exchange proposes to eliminate rule text in Rules 7.31(d)(4) and 7.31(h)(2)(A) currently providing that a D Order or Primary Pegged Order must include a minimum of one round lot displayed. The Exchange believes that requiring D Orders and Primary Pegged Orders to be entered in round lots is unnecessary and that providing the option to enter D Orders and Primary Pegged Orders in odd lots could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot order quantities is not novel on the Exchange or other cash equity exchanges and believes that this proposed change would align the Exchange's handling of D Orders and Primary Pegged Orders with the treatment of similar order types on other cash equity exchanges.⁵

⁵ See, e.g., Nasdaq Stock Market LLC ("Nasdaq") Rule 4703(g), Cboe BZX Exchange, Inc. ("BZX") Rule 11.9(c)(10), and Cboe BYX Exchange, Inc. ("BYX") Rule 11.9(c)(10) (each describing Discretionary Orders, which, like D Orders, have a non-displayed discretionary price range within which the entering party is willing to trade); Members Exchange Rule 11.8(c)(2) (describing the Primary Peg Order type similar to the Primary Pegged Order and providing that a Primary Peg Order may be entered as an odd lot, round lot, or mixed lot). The Exchange notes that the rules of Nasdaq, BZX, and BYX appear to permit orders, including order types similar to D Orders and Primary Pegged Orders, to be entered in any size. See Nasdaq Rule 4703(b) (providing that an order may be entered in any whole share size, except as otherwise provided); BZX Rule 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated); BYX Rule 11.2 (same).

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 first quarter of 2024.

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 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 it would permit the option to enter D Orders and Primary Pegged Orders in odd-lot sizes, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the benefit of all market participants. The Exchange notes that the proposed change would not otherwise impact the operation of D Orders or Primary Pegged Orders as provided under current Exchange rules. The Exchange also believes that the proposed change would align Exchange rules with the treatment of similar order types on other cash equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.⁸

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See note 4, supra.

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. As noted above, the Exchange believes the proposed rule change would allow the Exchange to accept D Orders and Primary Pegged Orders of any size and align the Exchange's handling of such orders with other cash equity exchanges' handling of similar order types,⁹ thereby promoting competition among exchanges by offering options available on other cash equity exchanges. 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.

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

⁹ Id.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

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

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ 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 to allow it to accept D Orders and Primary Pegged Orders of any size as soon as the technology associated with the proposed change is available. The Exchange states that the proposal raises no novel issues and that waiver of the operative delay would allow the Exchange to more expeditiously offer increased flexibility to member organizations and promote additional trading opportunities for all market participants. The Commission finds that, because the proposal does not change the operation of D Orders or Primary Pegged Orders, other than to expand their use to odd-lot orders, waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

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

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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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)¹⁶ 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-2024-11 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-2024-11. 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

¹⁶ 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-2024-11 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.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).