

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71366; File No. SR-NYSEArca-2014-01)

January 22, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 to Add a Minimum Execution Size Designation for Tracking Orders and MPL-IOC Orders

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 10, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 NYSE Arca Equities Rule 7.31 to add a minimum execution size designation for Tracking Orders and MPL-IOC Orders. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Equities Rule 7.31 to add a minimum execution size designation for Tracking Orders and MPL-IOC Orders.

A Tracking Order is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process<sup>4</sup> against orders equal to or less than the aggregate size of Tracking Order interest available at that price. For example, if a Tracking Order to buy is entered for 1,000 shares and a sell order enters the Tracking Order Process for 1,200 shares at the same price, the sell order would not execute against the buy Tracking Order because it is larger than the size of the buy Tracking Order.

An MPL Order is a type of Working Order that has conditional or undisplayed price and/or size. As set forth in NYSE Arca Equities Rule 7.31(h)(5), an MPL Order is a Passive Liquidity Order that is priced at the midpoint of the PBBO and does not trade through a Protected Quotation. An MPL Order has a minimum order entry size of one share and Users may specify a minimum executable size for an MPL Order, which must be no less than one share. If an MPL Order has a specified minimum executable size, it will execute against an

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<sup>4</sup> See NYSE Arca Equities Rules 7.31(f) and 7.37(c) (Order Execution). The Tracking Order Process is available during Core Trading Hours only, during which orders may be matched and executed in the Tracking Order Process as follows: If an order has not been executed in its entirety pursuant to the Directed Order, Display Order or Working Order processes, the NYSE Arca Marketplace shall match and execute any remaining part of the order in the Tracking Order Process in price/time priority, except that (1) any portion of an order received from another market center or market participant shall be cancelled immediately, and (2) an incoming ISO order shall not interact with the Tracking Order Process.

incoming order that meets the minimum executable size and is priced at or better than the midpoint of the PBBO. If the leaves quantity becomes less than the minimum size, the minimum executable size restriction will no longer be enforced on executions.

As set forth in NYSE Arca Equities Rule 7.31(h)(6), an MPL-IOC Order is an MPL Order priced at the midpoint of the PBBO when entered that follows the time-in-force instructions of an immediate-or-cancel order. An MPL-IOC Order follows the same execution and priority rules as an MPL Order, provided, however, (i) an MPL-IOC Order shall have a minimum order entry size of one round lot, (ii) Users may not specify a minimum executable size for an MPL-IOC Order, and (iii) if the market is locked or crossed, the MPL-IOC Order will cancel.

The Exchange proposes to amend Rule 7.31(f) to add optional functionality so that the ETP Holder may designate a minimum execution size for a Tracking Order. For example, if an ETP Holder that submits a Tracking Order to buy for 1,000 shares sets a minimum quantity of 200 shares, that Tracking Order will only execute against eligible contra-side interest that is 200 to 1,000 shares in size at the same price. As proposed, if the Tracking Order with a minimum size requirement is executed but not exhausted and the remaining portion of the Tracking Order is less than the minimum size requirement, the Exchange would cancel the Tracking Order. So if the Tracking Order for 1,000 shares has a minimum quantity of 200 shares, and receives an execution of 900 shares, because the remaining portion (100 shares) is less than the minimum execution quantity, it would be cancelled.

The Exchange also proposes to amend NYSE Arca Equities Rule 7.31(h)(6) to delete that Users may not specify a minimum executable size for an MPL-IOC Order. As proposed, an MPL-IOC Order will operate in the same manner as a regular MPL Order with respect to the

ability to specify a minimum executable size. Because such order also includes the immediate-or-cancel time-in-force condition, if the contra-side available liquidity does not meet the minimum executable size designated for the MPL-IOC Order, the MPL-IOC Order will immediately cancel. The Exchange is proposing to make this change because it now has the technological capability to enable Users to specify a minimum executable size for MPL-IOC Orders, thereby reducing one of the differences between regular MPL Orders and MPL-IOC Orders.

The Exchange believes that providing ETP Holders with the option to designate a minimum quantity for additional non-displayed order types will promote the entry of liquidity at the Exchange because ETP Holders entering such orders will be assured of obtaining a larger-sized execution. With respect to Tracking Orders, the Exchange believes that the proposed rule change could attract ETP Holders that are seeking larger executions to enter Tracking Orders because by designating a minimum quantity, the submitting ETP Holder would be assured that they are not traded against by smaller-sized interest. As noted above, the Exchange notes that it already provides for similar functionality for MPL Orders.<sup>5</sup> The one difference between the proposed functionality for Tracking Orders and the existing minimum quantity feature for MPL Orders is that if a Tracking Order is reduced below the size of the minimum quantity, the Tracking Order will cancel. The Exchange believes that this difference is appropriate because at the Exchange, Tracking Orders are passive liquidity of last resort at the Exchange. If an ETP Holder seeks to add passive liquidity that does not cancel if it is reduced below the minimum quantity designation, that ETP Holder could enter an MPL Order, which is another form of non-displayed liquidity, with a minimum quantity.

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<sup>5</sup> See NYSE Arca Equities Rule 7.31(h)(5).

The Exchange also proposes to clarify Rule 7.31(f) to specify that STP modifiers, as defined in Rule 7.31(qq), are ignored for Tracking Orders. The Exchange notes that the Exchange makes STP modifiers available to ETP Holders on an optional basis. If, however, an ETP Holder designates a Tracking Order with an STP modifier, Exchange systems will ignore that modifier when processing the order. The Exchange notes that this is current functionality and proposes to update the rule to provide transparency regarding how order types and optional modifiers interact. The Exchange further notes that the functionality associated with STP modifiers was added after the Tracking Order process was implemented and the two functions are not currently technologically compatible.

The Exchange will announce by Trader Update the implementation date of the proposed change to add a minimum execution size designation for Tracking Orders and MPL-IOC Orders.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposal would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would provide an incentive for ETP Holders seeking larger-sized executions both to post liquidity at the Exchange using these features and to route larger-sized orders to the Exchange

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

because of the potential for an execution against such liquidity. While interest with a minimum execution quantity will not execute against arriving smaller-sized contra interest, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because a size designation does not discriminate against a particular ETP Holder. Rather, the proposed functionality would be available to all ETP Holders. The Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to existing functionality available to ETP Holders with the MPL Order type, which also permits an ETP Holder to designate a minimum execution quantity. The proposed functionality is also similar to functionality available at the NASDAQ Stock Market LLC (“Nasdaq”)<sup>8</sup> and the New York Stock Exchange LLC (“NYSE”).<sup>9</sup> The Exchange further believes that the proposal removes impediments to and perfects a national market system by offering the minimum execution quantity option differently for Tracking Orders and for MPL-IOC orders. Specifically, Tracking Orders are non-displayed passive liquidity of last resort at the Exchange that an order may execute against before being routed to another market. The Exchange believes it is appropriate to provide an option for ETP Holders seeking to provide such liquidity to not only designate a minimum execution quantity, but for such orders to cancel if through executions, the leaves quantity is smaller than the ETP Holder-designated minimum execution quantity.

The Exchange believes that adding specificity to Rule 7.31(f) that STP modifiers are ignored for Tracking Order [sic] removes impediments to and perfects the mechanism of a free

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<sup>8</sup> See Nasdaq Rule 4751(d)(5) (defining a “Minimum Quantity Order” as a Non-Displayed Order that will not execute unless a specified minimum quantity of shares can be obtained).

<sup>9</sup> See NYSE Rule 13 (defining the “IOC-MTS Order” as an immediate or cancel order that may include a minimum trade size instruction).

and open market by providing transparency of when STP modifier protection is not available. The Exchange notes that use of STP modifiers is optional and that ETP Holders that enter Tracking Orders should be aware that they have entered such interest and therefore can undertake measures other than STP modifiers to prevent wash sales.

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 amendment will not impose any burdens on competition because the proposal would extend the availability of an existing functionality – the optional minimum execution quantity – to an [sic] additional non-displayed liquidity-providing order types, the Tracking Order and the MPL-IOC Orders. The Exchange further notes that Nasdaq already offers similar functionality for its non-displayed orders.

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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 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<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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 Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-01 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).



All submissions should refer to File Number SR-NYSEArca-2014-01. 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, 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEArca-2014-01 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).