

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85071; File No. SR-NYSE-2019-01)

February 7, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31 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 January 28, 2019, 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 amend Rule 7.31 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 7.31 relating to the Minimum Trade Size (“MTS”) Modifier. Specifically, the Exchange proposes to make the MTS Modifier available for Non-Displayed Limit Orders⁴ and Non-Displayed Primary Pegged Orders.⁵ The Exchange also proposes to provide additional optionality for member organizations using the MTS Modifier with Limit IOC Orders, Non-Displayed Limit Orders, and Mid-Point Liquidity (“MPL”) Orders. As proposed, member organizations could choose how such orders would trade on arrival to trade either with (i) orders that in the aggregate meet the MTS (current functionality), or (ii) individual orders that each meet the MTS (proposed functionality).

The MTS Modifier is currently available for Limit IOC Orders⁶ and MPL Orders.⁷ As such, the MTS Modifier is currently available only for orders that are not displayed and do not route. On arrival, both Limit IOC Orders and MPL Orders with an MTS Modifier will trade against contra-side orders in the Exchange Book that in the aggregate, meet the MTS. Once resting, MPL Orders with an MTS Modifier function similarly: if a contra-side order does not

⁴ See Rule 7.31(d)(2). In sum, a Non-Displayed Limit Order is a Limit Order that is not displayed and does not route. Id.

⁵ See Rule 7.31(h)(4). In sum, A Non-Displayed Primary Pegged Order is a Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed, that is not displayed and does not route. Id.

⁶ See Rule 7.31(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.

⁷ See Rule 7.31(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.

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 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.

The Exchange proposes to amend its rules to make MTS Modifier functionality available for two additional non-displayed orders that do not route, i.e., Non-Displayed Limit Orders and Non-Displayed Primary Pegged Orders.⁸

The Exchange also proposes to add an option that an order with an MTS Modifier would trade on entry only with individual orders that each meet the MTS. This proposed change is based on the rules of its affiliate, NYSE American LLC (“NYSE American”), which offers the option for orders with an MTS to trade on entry only with individual orders that each meet the MTS of the incoming order.⁹ Both of these proposed changes are also based on the rules of 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.¹⁰

Nasdaq and IEX, as well as Cboe BYX Exchange, Inc. (“BYX”), Cboe BZX Exchange, Inc.

⁸ The Exchange also proposes to make related changes to paragraph (F) of Rule 7.31(i)(3) and Rule 7.37 to refer to orders with an MTS Modifier generally to accommodate the additional order types that may include an MTS Modifier.

⁹ See NYSE American Rule 7.31E(i)(3)(B). See also Securities Exchange Act Release No. 81672 (September 21, 2017), 82 FR 45099 (September 27, 2017) (SR-NYSEAMER-2017-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31E Relating to the Minimum Trade Size Modifier for Additional Order Types and Expanding the Minimum Trade Size Modifier for Existing Order Types). The Exchange understands that NYSE American as well as its other affiliated exchanges, NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National”, together with the Exchange and NYSE Arca, the “Affiliate SROs”) intend to file similar proposed rule changes with the Commission to extend the availability of their respective MTS Modifiers to Non-Displayed Limit Orders.

¹⁰ 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).

(“BZX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”, together with BYX, BZX, and EDGA, the “Cboe Equity Exchanges”), also all offer the option for orders with a minimum trade size to trade on entry only with individual orders that each meet the minimum trade size condition of the incoming order.¹¹

Rule 7.31(i)(3) currently states that on arrival, an order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order’s MTS. As amended, Rule 7.31(i)(3)(B) would now require a member organization to specify one of the following instructions with respect to how an order with an MTS Modifier would trade on arrival (new text underlined):

- (i) An order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order’s MTS[.]; or
- (ii) An order to buy (sell) with an MTS Modifier will trade with individual sell (buy) order(s) in the Exchange Book that each meets such order’s MTS as provided for in paragraph (i)(3)(F)(ii) of this Rule.

Proposed paragraph (i)(3)(B)(ii) is new and reflects the Exchange’s proposal to add an alternative to how an order with an MTS Modifier would trade on arrival. An order with an

¹¹ See Nasdaq Rule 4703(e) (Nasdaq’s “Minimum Quantity” order attribute allows for a Nasdaq participant to specify one of two alternatives to how a Minimum Quantity Order would be processed at the time of entry, one of which is that “the minimum quantity condition must be satisfied by execution against one or more orders, each of which must have a size that satisfies the minimum quantity condition”) and IEX Rule 11.190(b)(11)(G)(iii)(B) (On arrival, IEX’s “Minimum Execution Size with All-or-None Remaining” qualifier for IEX’s MQTY executes against each willing resting order in priority, provided that each individual execution size meets its effective minimum quantity.) See also BYX Rule 11.9(c)(5); BZX Rule 11.9(c)(5); EDGA Rule 11.6(h); and EDGX Rule 11.6(h) (The Cboe Equity Exchanges each allow a User to alternatively specify the order not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the book.)

MTS Modifier that is to trade upon entry only with individual orders that each meet the MTS would execute against resting orders in accordance with Rules 7.31(i)(3)(F)(i) and 7.36, Order Ranking and Display, until it reaches an order that does not satisfy the MTS, at which point it would be posted or cancelled in accordance with the terms of the order. This proposed rule text is also based on NYSE American Rule 7.31E(i)(3)(B).¹² Proposed Exchange Rule 7.31(i)(3)(B)(i) would describe the existing functionality as one of the instructions that would be available to member organizations.

As discussed above, the addition of this instruction for how orders with an MTS Modifier would trade on entry is based on the rules of NYSE American, Nasdaq, IEX, and the Cboe Equity Exchanges.¹³

For parity allocation purposes, the Exchange proposes to treat an order with an MTS Modifier that is to execute on entry only with individual orders that each meet the MTS the same as a resting order with an MTS Modifier that becomes an Aggressing Order. Rule 7.31(i)(3)(F)(ii) sets forth how a resting order to buy (sell) with an MTS that becomes an Aggressing Order trades with sell (buy) orders in a priority category that allocates orders on parity. Because in a parity allocation model, more than one contra-side resting order may participate in an allocation, the Aggressing Order to buy (sell) with an MTS Modifier does not trade with any contra-side orders if at least one sell (buy) order that would have been considered for allocation does not meet the MTS. The Exchange proposes that this allocation logic would be applicable both when an order is resting and becomes an Aggressing Order (current functionality) or when an order is designated to execute on entry only with individual orders that

¹² See supra note 9.

¹³ See supra notes 9 and 11.

each meet the MTS (proposed functionality). In such scenario, if the arriving order cannot trade, it would be ranked on the Exchange Book.

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 first 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”),¹⁴ in general, and furthers the objectives of Section 6(b)(5),¹⁵ 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 two additional non-displayed, non-routable orders, e.g., Non-Displayed Limit Orders and Non-Displayed Primary Pegged 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.¹⁶

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See supra note 10.

The Exchange also believes that the proposal 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 it would provide member organizations with the option for orders with a MTS Modifier to trade on entry only with individual orders that each meets the MTS of the incoming order, thereby providing member organizations with more control in how such orders could execute. The proposed rule change is based on similar options available for users of minimum trade size functionality on the Exchange's affiliate, NYSE American, as well as Nasdaq, IEX, and the Cboe Equity Exchanges.¹⁷ The Exchange further believes that this proposed option would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would allow member organizations to provide an instruction that an order with an MTS Modifier would not trade with orders that are smaller in size than the MTS for such order, thereby providing member organizations with more control over when an order with an MTS Modifier may be executed.

The Exchange believes that if a member organization designates an order with an MTS Modifier, that member organization has instructed the Exchange not to trade that order with contra-side orders that are smaller in size than the MTS. Because in a parity allocation, resting orders are allocated based on their position on an allocation wheel, it would be consistent with the incoming order's instruction and current functionality for resting orders with an MTS that become an Aggressing Order not to trade at all rather than to trade with even one order in the parity allocation that that does not meet the MTS.

¹⁷ See supra notes 9 and 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 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, IEX, and the Cboe Equity Exchanges. The 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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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.²⁰

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

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)²¹ 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-NYSE-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-NYSE-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

²¹ 15 U.S.C. 78s(b)(2)(B).

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. 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-NYSE-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.²²

Eduardo A. Aleman
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).