

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86084; File No. SR-NYSE-2019-33)

June 11, 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 Yielding Modifier

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 June 4, 2019, New York Stock Exchange LLC (“NYSE” or “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 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 Yielding 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 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.

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(i)(5) relating to the Yielding Modifier. The Exchange recently amended its Pillar platform trading rules to provide for the Yielding Modifier.⁴ Separately, before that proposed rule change was approved, the Exchange filed to amend Rule 7.31 to make the Minimum Trade Size (“MTS”) Modifier available for additional non-displayed orders.⁵ The Exchange has announced that the changes described in both the Yielding Filing and the MTS Filing will be implemented on the same day, currently scheduled for June 17, 2019.⁶

Because the Yielding Filing was filed before the MTS Filing, then-proposed Rule 7.31(i)(5) did not reflect the change described in the MTS Filing to extend the availability of the MTS Modifier to additional non-displayed order types. The Exchange now proposes to update a reference to the MTS Modifier in Rule 7.31(i)(5)(B)(i) to reflect the changes described in the MTS Filing.

Specifically, Rule 7.31(i)(5)(B)(i) describes the circumstances when an Aggressing Yielding Order with a limit price equal to the limit price of a same-side resting order could trigger such resting order to become an Aggressing Order. Two exceptions are if the contra-side

⁴ See Securities Exchange Act Release No. 85158 (February 15, 2019), 84 FR 5794 (February 22, 2019) (SR-NYSE-2018-52) (Approval Order) (“Yielding Filing”).

⁵ See Securities Exchange Act Release No. 85071 (February 7, 2019), 84 FR 3843 (February 13, 2019) (SR-NYSE-2019-01) (Notice of filing and immediate effectiveness) (“MTS Filing”). Prior to this proposed rule change, the MTS Modifier was available only for Limit IOC Orders and MPL Orders.

⁶ See Trader Update dated April 16, 2019, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/Revised_Pillar_Migration_Timeline.pdf.

resting order is either an MPL-ALO Order or an MPL Order with an MTS Modifier.⁷ As described in the Yielding Filing, a contra-side resting MPL Order with an MTS Modifier may not be eligible to trade at the price of the Yielding Order, which is why neither the Aggressing Yielding Order nor the resting order on the same side as the Yielding Order will trade.⁸ Because the MTS Modifier will be available to additional non-displayed order types and because any order with an MTS Modifier would be subject to the same conditions as described in the Yielding Filing for MPL Orders with an MTS Modifier, the Exchange proposes to amend Rule 7.31(i)(5)(B)(i) to replace the term “MPL Order with an MTS Modifier” with the term “order with an MTS Modifier.”

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (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.

⁷ Rule 7.31(i)(5)(B) and subparagraph(i) provide that “An Aggressing Yielding Order to buy (sell) with a limit price equal to the limit price of a resting order to buy (sell) will either: (i) trigger such resting order to become an Aggressing Order, unless the order to sell (buy) buy is an MPL ALO or MPL Order with an MTS Modifier, in which case neither the Yielding Order nor the same-side resting order will trade” (emphasis added).

⁸ See Securities Exchange Act Release No. 84806 (December 12, 2018), 83 FR 64913, 64919 (December 18, 2018) (SR-NYSE-2018-52) (Notice of Filing of Yielding Filing).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change to amend Rule 7.31(i)(5)(B)(i) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would update the rule relating to the Yielding Modifier to reflect changes made to the MTS Modifier as described in the MTS Filing. The rationale for referencing MPL Orders with an MTS Modifier in Rule 7.31(i)(5)(B)(i), as described in the Yielding Filing, is equally applicable to any order with an MTS Modifier: because of the MTS, such order may not be eligible to trade at the price of the Yielding Order. Accordingly, to ensure that all orders with an MTS Modifier would be treated similarly under these circumstances, the Exchange proposes to amend Rule 7.31(i)(5)(B)(i) to replace the term “MTS [sic] Order with an MTS Modifier” with the term “order with an MTS Modifier.”

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 is not designed to address any competitive issues, but rather, would update the rule relating to Yielding Orders to reflect changes to the MTS Modifier as described in the MTS Filing.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder because the proposal does not: (i) significantly affect

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Exchange states that the proposed rule change would update the rule relating to the Yielding Modifier to reflect changes already made to the MTS Modifier as described in the MTS Filing. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.¹⁵

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.¹⁶ If the Commission takes such action, the

¹³ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

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

¹⁶ 15 U.S.C. 78s(b)(3)(C).

Commission shall institute proceedings 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-2019-33 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-2019-33. 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. 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-2019-33 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.¹⁷

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30–3(a)(12).