

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81672; File No. SR-NYSEAMER-2017-17)

September 21, 2017

Self-Regulatory Organizations; NYSE American LLC; 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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 11, 2017, NYSE American LLC (“Exchange” or “NYSE American”) 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 7.31E relating to the Minimum Trade Size modifier.

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

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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.

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 7.31E relating to the Minimum Trade Size (“MTS”) modifier. Specifically, the Exchange proposes to make the MTS modifier available for Non-Displayed Primary Pegged Orders<sup>4</sup> and Discretionary Pegged Orders. In addition, the Exchange proposes to provide additional optionality for ETP Holders using the MTS modifier with Midpoint Liquidity (“MPL”) Orders, Non-Displayed Primary Pegged Orders, and Discretionary Pegged Orders. As proposed, ETP Holders 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 Orders,<sup>5</sup> MPL Orders,<sup>6</sup> and Tracking Orders.<sup>7</sup> As such, the MTS modifier is currently available only for orders that are not

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<sup>4</sup> The Exchange proposes a non-substantive amendment to rename “Primary Pegged Orders” as “Non-Displayed Primary Pegged Orders” in Rule 7.31E(h)(2). The Exchange believes that this proposed amendment provides transparency regarding whether Primary Pegged Orders on the Exchange are displayed.

<sup>5</sup> See Rule 7.31E(b)(2)(A) (“A Limit IOC Order to buy (sell) may be designated with a minimum trade size (“MTS”), which will trade against sell (buy) orders in the Exchange Book that in the aggregate, meets its MTS. On entry, a Limit IOC Order with an MTS must have a minimum of one round lot and will be rejected on arrival if the MTS is larger than the size of the Limit IOC Order. A Limit IOC Order with an MTS that cannot be immediately traded at its minimum size will be cancelled in its entirety.”)

<sup>6</sup> See Rule 7.31E(d)(3)(D) (“An MPL Order may be designated with an MTS of a minimum of one round lot and will be rejected on arrival if the MTS is larger than the size of the MPL Order. On arrival, an MPL Order to buy (sell) with an MTS will trade with sell (buy) orders in the Exchange Book that in the aggregate, meets its MTS. If the sell (buy) orders do not meet the MTS, the MPL Order to buy (sell) will not trade on arrival and will be ranked in the Exchange Book. Once resting, an MPL Order to buy

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.<sup>8</sup> Once resting, MPL Orders and Tracking Orders with an MTS modifier function similarly: if a contra-side order does not meet the MTS, the incoming order will not trade with and may trade through the resting order with the MTS modifier. In addition, both MPL Orders and Tracking 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 additional non-displayed orders that do not route, i.e., Non-Displayed Primary Pegged Orders and Discretionary Pegged Orders. 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. These proposed changes are based on the rules of 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, including pegging orders and for IEX, its

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(sell) with an MTS will trade with an order to sell (buy) that meets the MTS and is priced at or below (above) the midpoint of the PBBO. If an order does not meet an MPL Order's MTS, the order will not trade with and may trade through such MPL Order. If an MPL Order with an MTS is traded in part or reduced in size and the remaining quantity of the order is less than the MTS, the MPL Order will be cancelled.”)

<sup>7</sup> See Rule 7.31E(d)(4)(C) (“A Tracking Order may be designated with an MTS of one round lot or more. If an incoming order cannot meet the MTS, a Tracking Order with a later working time will trade ahead of the Tracking Order designated with an MTS with an earlier working time. If a Tracking Order with an MTS is traded in part or reduced in size and the remaining quantity is less than the MTS, the Tracking Order will be cancelled.”)

<sup>8</sup> Tracking Orders, including Tracking Orders with an MTS modifier, are passive orders that do not trade on arrival.

Discretionary Peg Order.<sup>9</sup> Both exchanges also offer the option for orders with a minimum trade size to trade on entry only with individual orders that each meet the MTS of the incoming order.<sup>10</sup>

To effect this proposed rule change, the Exchange proposes to move all references to MTS modifiers in Rule 7.31E to proposed Rule 7.31E(i)(3), as a new additional order instruction and modifier to be referred to as the “Minimum Trade Size (‘MTS’) Modifier.” As proposed, Rule 7.31E(i)(3) would provide that a Limit IOC Order, MPL Order, Tracking Order, Non-Displayed Primary Pegged Order, or Discretionary Pegged Order may be designated with an MTS Modifier. Because this proposed rule text would specify which orders would be eligible for the MTS Modifier, the Exchange proposes to delete existing rule text specifying which orders are and are not eligible for an MTS.<sup>11</sup>

Proposed Rule 7.31E(i)(3)(A) would provide that an MTS must be a minimum of a round lot and that an order with an MTS Modifier would be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order. This proposed rule text is based on the next-to-

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<sup>9</sup> 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 that may be a pegged order, which includes IEX’s “Primary Peg Order” and “Discretionary Peg Order”).

<sup>10</sup> 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.)

<sup>11</sup> The Exchange proposes to delete references to MTS in Rules 7.31E(b)(2)(A), 7.31E(b)(2)(B), 7.31E(d)(3)(D), 7.31E(d)(4)(C), 7.31E(e)(3)(B), and 7.46E(f)(1)(A).

last sentence of Rule 7.31E(b)(2)(A) and the first sentence of 7.31E(d)(3)(D), and in part on the first sentence of Rule 7.31E(d)(4)(C), with non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.<sup>12</sup>

Proposed Rule 7.31E(i)(3)(B) would provide that an ETP Holder must specify one of the following instructions with respect to how an order with an MTS Modifier would trade at the time of entry. This proposed text is new and reflects the Exchange's proposal to add an alternative to how an order with an MTS Modifier would trade on entry. Proposed Rule 7.31E(i)(3)(B)(i) would describe the existing functionality as one of the instructions that would be available to ETP Holders. The proposed rule would provide that an order to buy (sell) with an MTS Modifier would trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order's MTS. This proposed rule text is based on the third sentence of Rule 7.31E(b)(2)(A) and the second sentence of Rule 7.31E(d)(3)(D) with non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.

Proposed Rule 7.31E(i)(3)(B)(ii) would describe the new instruction that on entry, an order to buy (sell) with an MTS Modifier could trade with individual sell (buy) order(s) in the Exchange Book that each meets such order's MTS. Because the Exchange is not proposing to change how an MTS Modifier would function for Limit IOC Orders, the Exchange further proposes to provide that this instruction would not be available for Limit IOC Orders. As

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<sup>12</sup> Nasdaq also requires that its Minimum Quantity Order also have a size of at least a round lot. See Nasdaq Rule 4703(e).

discussed above, the addition of this instruction for how orders with an MTS Modifier would trade on entry is based on the rules of Nasdaq and IEX.<sup>13</sup>

Proposed Rule 7.31E(i)(3)(C) would provide that an order with an MTS Modifier that is designated Day and cannot be satisfied on arrival would not trade and would be ranked in the Exchange Book. This proposed rule text is based on the third sentence of Rule 7.31E(d)(3)(D) with non-substantive differences to reference orders designated Day so that this proposed rule text would also be applicable to Non-Displayed Primary Pegged Orders and Discretionary Pegged Orders, which are also designated Day.

Proposed Rule 7.31E(i)(3)(D) would provide that an order with an MTS Modifier that is designated IOC and cannot be immediately satisfied would be cancelled in its entirety. This proposed rule text is based on the last sentence of Rule 7.31E(b)(2)(A), with non-substantive differences to specify that this functionality would be applicable to any orders designated IOC that have an MTS Modifier, i.e., Limit IOC Orders and MPL-IOC Orders.

Proposed Rule 7.31E(i)(3)(E) would provide that a resting order to buy (sell) with an MTS Modifier would trade with individual sell (buy) order(s) that each meets the MTS. This proposed rule text is based on the fourth sentence of Rule 7.31E(d)(3)(D) with a non-substantive difference to use the same terminology as proposed Rule 7.31E(i)(3)(B)(ii) because a resting order with an MTS Modifier only trades if contra-side individual orders each meets such order's MTS. The Exchange proposes non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.

Proposed Rules 7.31E(i)(3)(E)(i) – (iii) would set forth additional requirements for how a resting order with an MTS Modifier would trade. Proposed Rule 7.31E(i)(3)(E)(i) would

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<sup>13</sup> See supra note 10.

provide that if a sell (buy) order does not meet the MTS of the resting order to buy (sell) with an MTS Modifier, that sell (buy) order would not trade with and may trade through such order with an MTS Modifier. This proposed rule text is based on the fifth sentence of Rule 7.31E(d)(3)(D) and the second sentence of Rule 7.31E(d)(4)(C) with non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.

Proposed Rule 7.31E(i)(3)(E)(ii) would provide that if a resting sell (buy) order did not meet the MTS of a same-priced resting order to buy (sell) with an MTS Modifier, a subsequently arriving sell (buy) order that meets the MTS would trade ahead of the resting sell (buy) order. This proposed rule text is based on the second sentence of Rule 7.31E(d)(4)(C) with non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.

Proposed Rule 7.31E(i)(3)(E)(iii) would provide that a resting order to buy (sell) with an MTS Modifier would not be eligible to trade if sell (buy) order(s) ranked Priority 2 – Display Orders are displayed on the Exchange Book at a price lower (higher) than the working price of such MTS Order. This proposed rule is new and is designed to ensure that a non-displayed order with an MTS Modifier that is resting on the Exchange Book would not trade at a price that crosses the price of a displayed contra-side order.

For example, if the PBBO<sup>14</sup> is \$10.10 x \$10.14 and there is a resting MPL Order to buy with an MTS Modifier for 100 shares that has a working price of \$10.12 (“Order A”), a later-arriving Limit Order to sell ranked Priority 2 – Display Orders for 50 shares priced at \$10.11 (“Order B”) would not be eligible to trade with Order A because it does not meet Order A’s

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<sup>14</sup> PBBO is defined in Rule 1.1E(dd) as the Best Protected Bid and the Best Protected Offer.

MTS. However, because it is odd-lot sized, Order B would not change the PBBO and therefore the working price of Order A would not change, but Order B would be displayed on the Exchange's proprietary data feeds at \$10.11. In such case, to eliminate the potential for the Exchange to have an execution of Order A at a higher price than Order B, Order A would not be eligible to trade until such time that Order B no longer internally crosses Order A's working price. Order A and Order B would no longer be internally crossed if, for example, Order B is cancelled or executed or if the PBBO moves such that the working price of Order A no longer internally crosses the display price of Order B.

As a related matter, the Exchange also proposes to amend Rule 7.46E (Tick Size Pilot Plan) to establish how the Exchange would process orders with an MTS Modifier for Pilot Securities in Test Group Three. Proposed Rule 7.46E(f)(5)(I) would provide that for such securities, a resting order to buy (sell) with an MTS Modifier would not be eligible to trade if sell (buy) order(s) ranked Priority 2 – Display Orders are displayed on the Exchange Book at a price *equal to* or lower (higher) than the working price of such MTS Order. The Exchange proposes this difference for Pilot Securities in Test Group Three of the Tick Size Pilot Plan to ensure that a non-displayed order does not trade ahead of a same-price contra-side displayed order.

For example, if the PBBO is \$10.10 x \$10.20 and there is a resting MPL Order to buy with an MTS Modifier for 100 shares that has a working price of \$10.15 ("Order A"), a later-arriving Limit Order to sell ranked Priority 2 – Display Orders for 50 shares priced at \$10.15 ("Order B") would not be eligible to trade with Order A because it does not meet Order A's MTS, would not change the PBBO, and, pursuant to proposed Rule 7.31E(i)(3)(E)(ii), would rest on the Exchange Book internally locking the price of Order A. To avoid a violation of the Tick Size Pilot Plan for Pilot Securities in Test Group Three, Order A would not be eligible to trade if

Order B is displayed at Order A's working price until such time that the displayed order no longer internally locks Order A's working price. Order A and Order B would no longer be internally locked if, for example, Order B is cancelled or executed or if the PBBO moves such that the working price of Order A no longer internally locks the display price of Order B.

Proposed Rule 7.31E(i)(3)(F) would provide that a resting order with an MTS Modifier would be cancelled if it is traded in part or reduced in size and the remaining quantity is less than such order's MTS. This proposed rule text is based on the last sentence of Rule 7.31E(d)(3)(D) and the last sentence of Rule 7.31E(d)(4)(C) with non-substantive differences to use common terminology when applying this requirement to all of the order types eligible for an MTS Modifier.

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 fourth quarter of 2017.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>16</sup> 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.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposal to expand the availability of the Exchange's existing MTS Modifier to additional non-displayed, non-routable orders, e.g., Non-Displayed Primary Pegged Orders and Discretionary 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 exchanges similarly make minimum trade size functionality available to non-displayed, non-routable orders, including pegging orders, and for IEX, its Discretionary Peg Order.<sup>17</sup>

The Exchange 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 ETP Holders with the option for orders with a minimum trade size to trade on entry only with individual orders that each meets the MTS of the incoming order, thereby providing ETP Holders with more control in how such orders could execute. As such, the proposed rule change is based on similar options available for users of minimum trade size functionality on Nasdaq and IEX.<sup>18</sup> 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 ETP Holders 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 ETP Holders with more control over when an order with an MTS Modifier may be executed.

The Exchange believes that the proposal regarding when a resting order with an MTS would be eligible to trade would remove impediments to, and perfect the mechanism of, a free

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<sup>17</sup> See supra note 9.

<sup>18</sup> See supra note 10.

and open market and a national market system and, in general, to protect investors and the public interest, because the proposed rule change would ensure that a non-displayed order does not trade at a price that crosses the price of interest that is displayed on the Exchange, or for Tick Size Pilot Securities in Group Three, so that a non-displayed order would not trade at the same price as contra-side displayed interest in violation of the Tick Size Pilot Plan. This proposed rule change would therefore promote just and equitable principles of trade by ensuring that displayed interest does not get traded through by a non-displayed order.

Finally, the Exchange believes that the proposed amendment to rename the “Primary Pegged Order” as the “Non-Displayed Primary Pegged Order” 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 promote transparency in Exchange rules regarding whether Primary Pegged Orders on the Exchange are displayed.

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 address competition by making available on the Exchange functionality that is already available on Nasdaq and IEX. The Exchange therefore 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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>21</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>22</sup> 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that implementing the MTS modifier functionality as soon as possible would provide ETP Holders with greater control over when an order with an MTS modifier may be executed. The Exchange also stated that waiver of the 30-day operative delay would allow it to implement the proposed rule change when the technology supporting the change becomes available, which the Exchange anticipates to be less than 30 days after the date of this filing. The Commission notes that the proposed functionality is already available on other national securities exchanges. The Commission believes that waiving the 30-day operative delay

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</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>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>23</sup>

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. If the Commission takes such action, the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2017-17 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-NYSEAMER-2017-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEAMER-2017-17 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>24</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).