

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82447; File No. SR-NYSEAMER-2017-40)

January 5, 2018

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31E Relating to Mid-Point Liquidity Orders and the MTS Modifier and Rule 7.36E to Add a Definition of “Aggressing Order”

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 December 22, 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, II, and III 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 Mid-Point Liquidity Orders and the MTS Modifier and Rule 7.36E to add a definition of “Aggressing Order.” 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 7.31E (Orders and Modifiers) relating to Mid-Point Liquidity (“MPL”) Orders and the MTS Modifier and Rule 7.36E (Order Ranking and Display) to add a definition of “Aggressing Order.” For MPL Orders, the Exchange proposes to amend the price at which a marketable MPL Order would trade when there are resting orders priced better than the midpoint. The Exchange also proposes to amend how resting orders with an MTS Modifier would trade in specified circumstances.

Background

As provided for in current Rule 7.31E(d)(3)(C), on arrival, an MPL Order to buy (sell) that is eligible to trade will trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO (i.e., priced better than the midpoint of the PBBO). The rule further provides that resting MPL Orders to buy (sell) will trade at the midpoint of the PBBO against all incoming orders to sell (buy) priced at or below (above) the midpoint of the PBBO (i.e., priced better than the midpoint of the PBBO).

Current Rule 7.31E(i)(3) describes the MTS Modifier, including how a resting order with an MTS Modifier will trade. Current Rule 7.31E(i)(3)(E)(i) provides 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 will not trade with and may trade through such order with an MTS Modifier. Current Rule 7.31E(i)(3)(E)(ii) provides 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 will trade ahead of the resting sell (buy) order. Finally, current Rule 7.31E(i)(3)(E)(iii) provides that a resting order to buy (sell) with an MTS Modifier will 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. Similarly, Rule 7.46E(f)(5)(I) (Tick Size Pilot Plan) provides that for Pilot Securities in Test Group Three, a resting order to buy (sell) with an MTS Modifier will 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.

Proposed Definition of “Aggressing Order”

The Exchange proposes to amend Rule 7.36E to add a definition that would be used for purposes of Rule 7E. Proposed Rule 7.36E(a)(5) would define the term “Aggressing Order” to mean a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book.⁴ This term would therefore refer to orders that are marketable against other orders on the Exchange Book, such as incoming orders and orders that have returned unexecuted after routing.

This term would also be applicable to resting orders that become marketable due to one or more events. For the most part, resting orders will have already traded with contra-side orders against which they are marketable. However, there are circumstances when a resting order may become marketable, such as orders that become eligible to trade when a PBBO unlocks or uncrosses (e.g., MPL and Pegged Orders) or orders that have a trading restriction at specified prices (e.g., as discussed in greater detail below, orders with an MTS Modifier). To maximize the potential for orders to trade, the Exchange continually evaluates whether resting orders may become marketable. Events that could trigger a resting order to become marketable include

⁴ The term “marketable” is defined in Rule 1.1E(u) to mean for a Limit Order, an order than can be immediately executed or routed.

updates to the working price of such order, updates to the PBBO or NBBO, changes to other orders on the Exchange Book, or processing of inbound messages (e.g., an update to Price Bands under the Regulation NMS Plan to Address Extraordinary Market Volatility). To address such circumstances, the Exchange proposes to include in proposed Rule 7.36E(a)(5) that a resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages.

The order that becomes the Aggressing Order is the liquidity-taking order. Generally, if resting orders on both sides are determined to be an Aggressing Order, e.g., a locked PBBO becomes unlocked and as a result, MPL Orders are repriced, the later-arriving order will be the liquidity-taking order.⁵ However, if the evaluation results in only one side becoming an Aggressing Order, e.g., an order with an MTS Modifier becomes eligible to trade and the contra-side order(s) have no working price changes, the order with the MTS Modifier would become the liquidity-taking Aggressing Order. As described below, the Exchange proposes to use the term “Aggressing Order” in the rule text relating to the MTS Modifier. Because an Aggressing Order becomes a liquidity taker, such term could be applicable to other circumstances. For example, an order with a Non-Display Remove Modifier [sic] that trades as a liquidity taker would also be considered an Aggressing Order. However, at this time, the Exchange does not propose to amend its rules to use the term “Aggressing Order” because the rule already specifies which order is the liquidity taker.

⁵ See, e.g., Rule 7.31-E(d)(3)(B).

Proposed Amendments relating to MPL Orders

The Exchange proposes to amend the first sentence of current Rule 7.31E(d)(3)(C) to make this text applicable to any marketable MPL Order, and not just an arriving MPL Order. To effect this change, the Exchange proposes to use the term “Aggressing Order” and replace the phrase “[o]n arrival, an MPL Order to buy (sell) that is eligible to trade” with the phrase, “[a]n Aggressing MPL Order to buy (sell).”

The Exchange also proposes to amend the first sentence of current Rule 7.31E(d)(3)(C) to describe at what price an Aggressing MPL Order would trade with contra-side resting orders that are priced better than the midpoint. The rule currently provides that an arriving MPL Order to buy (sell) would trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO. The Exchange proposes to specify that when an Aggressing MPL Order trades with resting orders priced better than the midpoint, it will trade at the working price of the resting orders, which is current functionality. For example, if the PBB is 10.10 and the midpoint is 10.13, and there are non-displayed sell orders of 100 shares with working prices of 10.11 and 10.12, an Aggressing MPL Order to buy with a limit of 10.13 for 200 shares would trade with such non-displayed sell orders at 10.11 and 10.12, respectively. The Exchange believes that this proposed amendment would promote transparency in Exchange rules regarding at what price an Aggressing MPL Order would trade.

By using the term “Aggressing Order,” this rule would be applicable to a resting MPL Order that becomes marketable, such as after a PBBO unlocks or uncrosses. In the above example, if the MPL Order to buy is ineligible to trade because of a crossed PBBO, and while the PBBO is crossed, the Exchange receives the two non-displayed sell orders, when the PBBO

uncrosses and the new midpoint is 10.13, the resting MPL Order would become an Aggressing Order and would trade with the non-displayed sell orders at 10.11 and 10.12, respectively.

The Exchange also proposes to amend the second sentence of Rule 7.31E(d)(3)(C) to replace the term “incoming orders” with the term “Aggressing Orders.” This proposed rule change would provide greater specificity that any contra-side order that is an Aggressing Order, as defined in proposed Rule 7.36E(a)(5), would trade with a resting MPL Order at the midpoint of the PBBO.

Proposed Amendments relating to the MTS Modifier

The Exchange proposes to amend Rules 7.31E(i)(3)(C) and (E) to specify circumstances when a resting order with an MTS Modifier would not be eligible to trade.

Current Rule 7.31E(i)(3)(C) provides 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. The Exchange proposes to describe new functionality relating to when an order with an MTS Modifier that is designated Day would not be eligible to trade. In short, if a later-arriving contra-side order can meet the MTS of a resting order with an MTS Modifier, the two orders would trade unless the execution would be inconsistent with either intra-market price priority or would result in a non-displayed order trading ahead of a same-side, same-priced displayed order.⁶ Therefore, as proposed, the Exchange would not permit an order with an MTS Modifier that crosses other displayed or non-displayed orders on the Exchange Book to trade at prices that are worse than the price of such contra-side orders. As further proposed, the

⁶ Rule 7.36E(c) provides that the Exchange ranks all non-marketable orders on the Exchange Book according to price – time priority.

Exchange would not permit a resting order with an MTS Modifier to trade at a price equal to a displayed contra-side order.⁷

To reflect these changes, the second sentence of Rule 7.31E(i)(3)(C) would provide that when a buy (sell) order with an MTS Modifier that is designated Day is ranked in the Exchange Book, it would not be eligible to trade:

- (i) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of such order with an MTS Modifier, or
- (ii) at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of such order with an MTS Modifier.

For example,

- if the PBBO is 10.10 x 10.16, on the Exchange Book there is a sell order (“Order A”) ranked Priority 3 – Non-Display Orders for 50 shares at 10.12 and a sell order (“Order B”) ranked Priority 2 – Display Orders for 25 shares at 10.11, and the Exchange receives a buy MPL Order (“Order C”) with an MTS Modifier for 100 shares with a 10.16 limit, because the MTS cannot be met, Order C will not trade and will be ranked in the Exchange Book at the midpoint of 10.13. At this point, the Exchange would have a non-displayed buy order crossing both non-displayed and displayed sell orders on the Exchange Book. If the Exchange then receives a non-displayed sell order (“Order D”) for 100 shares at 10.11, even though Order D would be

⁷ A displayed odd-lot order that is not included in the calculation of the PBBO could be at the same price as an MPL Order.

marketable against Order C, it would not trade because a trade at 10.13 would be above the price of resting sell orders.⁸ Order D would be added to the Exchange Book at 10.11.

- If next, the Exchange receives a buy order (“Order E”) to buy 25 shares at 10.11, it would trade with Order B. As discussed above, this execution would trigger the Exchange to evaluate whether Order C becomes marketable against contra-side orders.⁹ In this scenario, because Order B has now executed, Order C is no longer restricted from trading at 10.11. Because Order C’s restriction has been lifted and Order D does not have a working price change, Order C would become an Aggressing Order and trade as the liquidity taker with Order D at 10.11.

Because proposed Rule 7.31E(i)(3)(C)(i) would be applicable to all securities that trade on the exchange, including Pilot Securities in the Tick Pilot Plan, the Exchange proposes to delete Rule 7.46E(f)(5)(I) as duplicative of the proposed new rule text.

The Exchange also proposes to amend Rules 7.31E(i)(3)(E)(i), (ii), and (iii) relating to the behavior of resting orders with an MTS Modifier.¹⁰ The Exchange proposes a non-substantive change to Rule 7.31E(i)(3)(E) to change the term “order(s)” to “orders,” which the Exchange believes is a more technically accurate way to describe that a resting order with an MTS Modifier will be evaluated against individual orders.

⁸ Pursuant to Rule 7.31E(d)(3)(C), an Aggressing Order will trade with a resting MPL Order at the midpoint of the PBBO.

⁹ See discussion infra regarding the second sentence to proposed Rule 7.36E(a)(5).

¹⁰ A resting order with an MTS Modifier that becomes an Aggressing Order would trade consistent with Rule 7.31E(i)(3)(E) and therefore would trade with individual orders that each meet the MTS.

First, the Exchange proposes to amend Rule 7.31E(i)(3)(E)(i) to use the term “Aggressing Order.” Use of this proposed new definition would not change the functionality associated with this rule. Accordingly, as proposed, the rule would provide that if an Aggressing Order to sell (buy) does not meet the MTS of the resting order to buy (sell) with an MTS Modifier, that Aggressing Order will not trade with and may trade through such order with an MTS Modifier (proposed new text in italics). The Exchange believes that use of the term “Aggressing Order” in the context of this rule would promote transparency of which order is trading with the resting order with an MTS Modifier.

Second, the Exchange proposes to amend Rule 7.31E(i)(3)(E)(ii) to provide that if a resting sell (buy) non-displayed 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 such resting non-displayed sell (buy) order at that price (proposed new text in italics), e.g., at the internal locking price. The Exchange proposes to amend this rule to provide that the subsequently arriving order could trade ahead of a resting non-displayed order at that price. As described above, the proposed amendment to Rule 7.31E(i)(3)(C)(i) would address circumstances when an order with an MTS Modifier is locked by a displayed order. In such case, the subsequently arriving order would not trade with the order with an MTS Modifier.

Finally, the Exchange proposes to delete current Rule 7.31E(i)(3)(iii) as superseded by proposed Rule 7.31E(i)(3)(C)(i) and (ii) and the amendments to Rule 7.31E(i)(3)(E)(i) and (ii).

Because of the technology changes associated with these 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 2018.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² 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 definition of “Aggressing Order” in Rule 7.36E would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because it would provide for a definition in Exchange rules that describes orders that are or become marketable. The Exchange believes that the proposed definition would promote transparency in Exchange rules by providing detail regarding circumstances when a resting order may become marketable, and thus would be an Aggressing Order. The Exchange further believes that use of such definition would promote clarity in Exchange rules, particularly in the context of the amendments to MPL Orders and orders with an MTS Modifier.

The Exchange believes that the proposed amendments to Rule 7.31E(d)(3)(C) to use the term “Aggressing Order” and to describe the prices at which an Aggressing MPL Order would trade would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest because it would promote clarity and transparency in Exchange rules regarding the behavior of marketable MPL

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Orders. In particular, the rule would provide greater specificity regarding how a resting MPL Order that becomes an Aggressing Order would trade.

Finally, the Exchange believes that the proposed amendments relating to when a resting order with an MTS Modifier would be eligible to trade would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest, because the proposed rule change would ensure that there would not be an execution of a resting order with an MTS Modifier that either would be inconsistent with intra-market price priority or would result in a non-displayed order trading ahead of a same-side, same-priced displayed order. 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.

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 not designed to address any competitive issues, but rather to add further clarity to Exchange rules by defining the term “Aggressing Order” and using that term in connection with MPL Orders. In addition, the rule is designed to ensure that resting orders with an MTS Modifier would not trade through displayed orders or violate intra-market priority.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSEAMER-2017-40 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-2017-40. 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-NYSEAMER-2017-40 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.¹⁸

Eduardo A. Aleman
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).