

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71331; File No. SR-NYSEArca-2013-92)

January 16, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in Order to Comprehensively Update Rules Related to the Exchange's Order Types and Modifiers

I. Introduction

On September 30, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in order to comprehensively update rules related to the Exchange's order types and modifiers. The proposed rule change was published for comment in the Federal Register on October 22, 2013.³ On December 5, 2013, the Commission extended to January 20, 2014 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁴ The Commission received no comment letters regarding the proposed rule change. On January 15, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70637 (October 9, 2013), 78 FR 62745 ("Notice").

⁴ See Securities Exchange Act Release No. 70995, 78 FR 62745 (December 11, 2013).

⁵ In Amendment No. 1, the Exchange proposed to delete a portion of the text of proposed Supplementary Material .01 to Rule 7.31. This aspect of the proposal is described in more detail below. See infra note 11 and accompanying text.

II. Description of the Amended Proposal

The Exchange proposes to amend NYSE Arca Equities Rules (“Rule(s)”) 7.31, 7.32, 7.37, and 7.38 in order to update its rules related to the Exchange’s order types and modifiers. The Exchange states that it is proposing these rule changes in order to provide additional specificity and transparency to NYSE Arca Equities ETP Holders regarding the operation of NYSE Arca Equities order types and modifiers, to better align its rules with currently available functionality, and to organize and define order types and modifiers in a more intuitive manner.⁶

Rule 7.31. The majority of the Exchange’s proposed revisions to Rule 7.31 would provide greater detail as to the existing functionality of certain order types and modifiers, including the Market Order (Rule 7.31(a)), Time in Force Modifiers (Rule 7.31(c)), Inside Limit Order (Rule 7.31(d)), Discretionary Order (Rule 7.31(h)(2)), Passive Discretionary Order (Rule 7.31(h)(2)(A)), Discretion Limit Order (Rule 7.31(h)(2)(B)), Reserve Order (Rule 7.31(h)(3)), Passive Liquidity Order (Rule 7.31(h)(4)), Mid-Point Passive Liquidity Order (Rule 7.31(h)(5)), Q Orders (Rule 7.31(k)), Auction-Only Order (Rule 7.31(t)), NOW Order (Rule 7.31(v)), Primary Only Order (Rule 7.31(x)), Pegged Orders (Rule 7.31(cc)),⁷ Proactive if Locked Modifier (Rule 7.31(hh)), Intermarket Sweep Order (Rule 7.31(jj)), Primary Sweep Order (Rule 7.31(kk)), Post No Preference Blind Order (Rule 7.31(mm)), and Add Liquidity Only Order (Rule 7.31(nn)).⁸

⁶ See Notice, 78 FR at 62745.

⁷ The Exchange’s proposed revisions to Rule 7.31(cc) entail, in part, specifically describing the two variations of Pegged Orders available to Users: Market Pegged and Primary Pegged Orders. See Notice, 78 FR at 62748; see also proposed Rule 7.31(cc).

⁸ For a more detailed description of the specific proposed revisions for each order type and modifier, see Notice, 78 FR at 62746-49; see also proposed Rule 7.31.

The Exchange also proposes to delete from Rule 7.31 descriptions of order types and modifiers that are no longer available to Users on Exchange systems, as well as delete cross-references to such order types and modifiers in other rules. The following order types would be deleted: Directed Order (Rule 7.31(i)), Directed Fill (7.31(j)), Fill-or-Return (Rule 7.31(p)), Fill-or-Return Plus (Rule 7.31(r)), Cleanup Order (Rule 7.31(u)), Midpoint Directed Fill (Rule 7.31(z)), and Don't Arb Me Modifier (Rule 7.31(gg)).⁹ Further, the Exchange proposes to describe certain functionalities as “modifiers” instead of “orders,” and to relocate certain order type and modifier descriptions within Rule 7.31.¹⁰

Supplementary Material to Rule 7.31. The Exchange proposes to add Supplementary Material .01 to Rule 7.31, which would provide that Users may combine the Exchange's order types and modifiers unless the terms of the proposed combination are inconsistent.¹¹ The Exchange also proposes to add Supplementary Material .02 to Rule 7.31, which would provide that if two order types are combined that include instructions for operation on arrival and for how the order operates while resting on the Exchange's book, the instructions governing functionality while incoming would be operative upon arrival. Functionality governing how the order operates while resting on the Exchange's book would govern any remaining balance of the order that is not executed upon arrival.¹²

⁹ See Notice, 78 FR at 62746-48. In addition, the Exchange proposes to delete, as redundant, the subparagraphs under current Rule 7.31(e), which currently describes the IOC Modifier. See *id.* at 62746.

¹⁰ See *id.* at 62746-48; see also proposed Rule 7.31. In addition to relocating the Market-on-Close Order and Limit-on-Close Order order type descriptions, the Exchange proposes to conform their descriptions to the descriptions of the Limit-on-Open and Market-on-Open order types. See Notice, 78 FR at 62748; see also proposed Rule 7.31

¹¹ See Notice, 78 FR at 62749; see also proposed Supplementary Material .01 to Rule 7.31.

¹² See Notice, 78 FR at 62749-50; see also proposed Supplementary Material .02 to Rule 7.31.

Rule 7.32 – Order Entry. The Exchange proposes to amend Rule 7.32 to specify that orders with a size greater than one million shares are rejected. Exchange systems currently do not accept orders with a size greater than one million shares.¹³

Rule 7.38 – Odd and Mixed Lots. The Exchange proposes to amend Rule 7.38(a)(2) to clarify that specific language in the descriptions of individual order types override the general rule that mixed lot orders may be any order type supported by the Exchange.¹⁴

Technical Amendments. The Exchange proposes to make certain technical amendments to various provisions in Rules 7.31 and 7.37 so that common abbreviations for order types and modifiers will be inserted throughout Rules 7.31 and 7.37 where appropriate.¹⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

¹³ See Notice, 78 FR at 62750; see also proposed Rule 7.32.

¹⁴ See Notice, 78 FR at 62750; see also proposed Rule 7.38.

¹⁵ See Notice, 78 FR at 62750.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change would provide greater specificity, transparency, and clarity with respect to the use and potential use of order types and modifiers on the Exchange. According to the Exchange, these enhancements would remove impediments to and perfect the mechanism of a free and open market and national market system because, with greater clarity regarding what a specific order type or modifier does and its proper use, greater competitive forces can be brought to bear on, and help to foster the proper functioning of, the market. Further, the Exchange believes that these enhancements would protect investors and the public interest because increased transparency and specificity would enable investors and the public to understand the tools available to the agents handling their orders as well as those available to professional market participants who may be competing with their orders.

The Commission notes that the instant proposal does not add any new functionality but instead enhances and clarifies the descriptions of the order type and modifier functionality currently available on the Exchange. For example, among other things, the Exchange's proposed revisions would provide greater detail as to the operation of and interaction between certain order types and modifiers, the circumstances in which certain order types or order type and modifier combinations are rejected, order types and modifiers that are compatible or incompatible with each other, and when certain order types will route to away markets. The proposal also adds new supplementary material to Rule 7.31 that further clarifies when existing order types and modifiers can be combined, and how the Exchange handles combined order types that include instructions for how the order should operate on arrival as well as while resting on the Exchange's book. Further, the Exchange proposes to update its rules by deleting obsolete order type and modifier provisions and reorganizing certain order type and modifier rules in a more intuitive manner. The Commission believes that these proposed changes are reasonably

designed to provide greater specificity, clarity and transparency with respect to the order type and modifier functionality available on the Exchange, and therefore should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The proposed revisions should further increase the Exchange's transparency with respect to the operation of its various order types and modifiers, and serve to enhance investors' understanding of the tools available with respect to the handling of their orders. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity with respect to the use and potential use of functionality offered by the Exchange. In addition, the initial proposal was open for comment for twenty-one days after publication and generated no comment. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act,¹⁸ to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

IV. Solicitation of Comments on Amendment No. 1

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:

¹⁸ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b).

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-NYSEArca-2013-92 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.

All submissions should refer to File Number SR-NYSEArca-2013-92. 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-2013-92 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2013-92) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).