

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96702; File No. SR-NYSEAMER-2023-03)

January 18, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify Rule 7.31E

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 4, 2023, NYSE American LLC (“NYSE American” 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 modify Rule 7.31E regarding MPL-IOC Orders. 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

¹ 15 U.S.C. 78s(b)(1).

² 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 regarding MPL-IOC Orders.

Rule 7.31E(d)(3) defines a Mid-Point Liquidity Order (“MPL Order”) as a Limit Order to buy (sell) that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the PBBO or its limit price. An MPL Order may be entered during any Exchange trading session, is ranked Priority 3 - Non-Display Orders, and does not participate in auctions. An MPL Order to buy (sell) must be designated with a limit price in the minimum price variation for the security and will be eligible to trade at its working price.³ If there is no PBB or PBO, or if the PBBO is locked or crossed, an arriving or resting MPL Order will not be eligible to trade until the PBBO is not locked or crossed. If a resting MPL Order to buy (sell) trades with another MPL Order to sell (buy) after the PBBO is unlocked or uncrossed, the MPL Order with the later working time will be the liquidity-removing order.⁴

An Aggressing MPL Order to buy (sell) will trade at the working price of resting orders to sell (buy) when such resting orders have a working price at or below (above) the working price of the MPL Order. Resting MPL Orders to buy (sell) will trade against all Aggressing Orders to sell (buy) priced at or below (above) the working price of the MPL Order.⁵

³ See Rule 7.31E(d)(3)(A).

⁴ See Rule 7.31E(d)(3)(B).

⁵ See Rule 7.31E(d)(3)(C). The Exchange also proposes a non-substantive conforming change to Rule 7.31E(d)(3)(C) to delete “that is eligible to trade” from the rule text. The Exchange proposes to eliminate this text as extraneous and notes that the proposed

Currently, Rule 7.31E(d)(3)(D) provides that an MPL Order may be designated with an Immediate-or-Cancel (“IOC”) Modifier (an “MPL-IOC Order”). An MPL Order designated IOC will be traded in whole or in part on the Exchange as soon as such order is received, and any untraded quantity will be cancelled.⁶ Rule 7.31E(d)(3)(D) further provides that, subject to the IOC Modifier, an MPL-IOC Order follows the same trading and priority rules as an MPL Order (as described above), except that an MPL-IOC Order will be rejected if (i) the order entry size is less than one round lot or (ii) there is no PBBO or the PBBO is locked or crossed.

The Exchange proposes to modify Rule 7.31E(d)(3)(D) to permit MPL-IOC Orders to be entered in any size and thus proposes to eliminate rule text currently providing that an MPL-IOC Order would be rejected if entered in a quantity less than one round lot. The Exchange believes that requiring MPL-IOC Orders to be entered in round lots is unnecessary and that providing ETP Holders with the option to enter MPL-IOC Orders in odd lots could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot order quantities is not novel on the Exchange or other cash equity exchanges and believes that this proposed change would align the Exchange’s handling of MPL-IOC Orders with the treatment of equivalent order types on other cash equity exchanges.⁷

change would harmonize the language of Rule 7.31E(d)(3)(C) with rules of the same number on its affiliated exchanges, New York Stock Exchange, LLC (“NYSE”); NYSE Arca, Inc. (“NYSE Arca”); NYSE Chicago, Inc. (“NYSE Chicago”); and NYSE National, Inc. (“NYSE National”) (collectively, the “Affiliated Exchanges”). See NYSE Rule 7.31(d)(3)(C); NYSE Arca Rule 7.31-E(d)(3)(C); NYSE Chicago Rule 7.31(d)(3)(C); NYSE National Rule 7.31(d)(3)(C).

⁶ See Rule 7.31E(b)(2) (defining IOC Modifier).

⁷ See, e.g., Members Exchange Rules 11.8(c)(1) and (2) (providing that a Midpoint Peg Order may be designated IOC and may be entered as an odd lot, round lot, or mixed lot); Cboe EDGX Exchange, Inc. Rules 11.8(d)(1) and (2) (providing that a MidPoint Peg Order may have an IOC instruction and may be entered as an odd lot, round lot, or mixed lot); Cboe EDGA Exchange, Inc. Rules 11.8(d)(1) and (2) (same). The Exchange also notes that the rules of the Nasdaq Stock Market LLC (“Nasdaq”), Cboe BZX Exchange,

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the first quarter of 2023.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ 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 change would 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 protect investors and the public interest because it would provide ETP Holders with the option to enter MPL-IOC Orders in odd-lot sized orders, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the benefit of all market participants. The Exchange notes that the proposed change would not otherwise impact the operation of MPL-IOC Orders as provided under current Exchange rules. The Exchange also believes that the proposed change would align

Inc. (“BZX”), and Cboe BYX Exchange, Inc. (“BYX”) appear to permit orders, including orders analogous to MPL-IOC Orders, to be entered in any size. See Nasdaq Rule 4703(b) (providing that an order may be entered in any whole share size, except as otherwise provided); BZX Rule 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated); BYX Rule 11.2 (same).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Exchange rules with the treatment of orders analogous to MPL-IOC Orders on other cash equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.¹⁰

The Exchange also believes that the proposed conforming change to Rule 7.31E(d)(3)(C) would 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 protect investors and the public interest by improving the clarity of Exchange rules and harmonizing the text of the rule with the Affiliated Exchanges' rules of the same number.

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. As noted above, the Exchange believes the proposed rule change would allow the Exchange to accept MPL-IOC Orders of any size and align the Exchange's handling of such orders with other cash equity exchanges' handling of similar order types,¹¹ thereby promoting competition among exchanges by offering ETP Holders options available on other cash equity exchanges. The Exchange also believes that, to the extent the proposed change would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants. The Exchange further believes that the proposed conforming change to Rule 7.31E(d)(3)(C) would not impose any burden on competition, as the change is intended only to simplify the rule text and align it with rules of the same number on the Affiliated Exchanges.

¹⁰ See note 7, supra.

¹¹ Id.

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)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may 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 to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposed change would align the Exchange's treatment of MPL-IOC Orders with treatment of similar order types on other cash equity exchanges and allow the Exchange to accept MPL-IOC Orders of any size as soon as the technology associated with the proposed change is available, which is anticipated to be less than 30 days from the date of

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

this filing. The Exchange also states that the proposed conforming change to Rule 7.31E(d)(3)(C) is non-controversial and does not raise any novel issues, as it would clarify Exchange rules and align the text of the rule with the Affiliated Exchanges' rules of the same number. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

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 to determine whether the proposed rule 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-NYSEAMER-2023-03 on the subject line.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2023-03. 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-2023-03 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

Sherry R. Haywood

Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).