

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99790; File No. SR-NYSEAMER-2024-17)

March 20, 2024

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

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 March 6, 2024, 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 amend Rule 7.31E to provide for the use of Day ISO Reserve Orders and make other conforming changes. 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 15 U.S.C. 78a.

³ 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 to provide for the use of Day ISO Reserve Orders and make conforming changes in Rule 7.11E (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) and Rule 7.37E (Order Execution and Routing).

Day ISO Orders

Rule 7.31E(e)(3) defines an Intermarket Sweep Order (“ISO”) as a Limit Order that does not route and meets the requirements of Rule 600(b)(38) of Regulation NMS. As described in Rules 7.31E(e)(3)(A) and subparagraphs (i) and (ii) thereunder, an ISO may trade through a protected bid or offer and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market, provided that (1) it is identified as an ISO and (2) simultaneously with its routing to the Exchange, the ETP Holder that submits the ISO also routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets.

Rule 7.31E(e)(3)(C) provides that an ISO designated Day (“Day ISO”), if marketable on arrival, will immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time the order arrived.

Reserve Orders

Rule 7.31E(d)(1) provides for Reserve Orders, which are Limit or Inside Limit Orders with a quantity of the size displayed and with a reserve quantity (“reserve interest”) of the size that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2 - Display Orders, and the reserve interest is ranked Priority 3 - Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the Exchange Book or to route to Away Markets. The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in Rule 7.31E(d)(2)(A).

As described in Rule 7.31E(d)(1)(A), the display quantity of a Reserve Order must be entered in round lots, and the displayed portion of a Reserve Order will be replenished when the display quantity is decremented to below a round lot. The replenish quantity will be the minimum display size of the order or the remaining quantity of the reserve interest if it is less than the minimum display quantity.

Rule 7.31E(d)(1)(B) provides that each time the display quantity of a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity (each display quantity with a different working time is referred to as a “child” order), while the reserve interest retains the working time of the original order entry. In addition, when a Reserve Order is replenished from reserve interest and already has two child orders that equal less than a round lot, the child order with the later working time will rejoin the reserve interest and be assigned the new working time assigned to the next replenished quantity. If a Reserve Order is not routable, the replenish quantity will be assigned a display and working price consistent with the instructions for the order.

Rule 7.31E(d)(1)(C) provides that a Reserve Order must be designated Day and may only be combined with a Non-Routable Limit Order.

Rule 7.31E(d)(1)(D) provides that routable Reserve Orders will be evaluated for routing both on arrival and each time their display quantity is replenished.

Rule 7.31E(d)(1)(E) provides that a request to reduce the size of a Reserve Order will cancel the reserve interest before cancelling the display quantity, and, if the Reserve Order has more than one child order, the child order with the latest working time will be cancelled first.

Rule 7.31E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order will not change and the reserve interest that replenishes the display quantity will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Rule 7.31E(d)(1)(F) further provides that, when the PBBO uncrosses, the display price and working price will be adjusted as provided for under Rule 7.31E(e)(1) relating to Non-Routable Limit Orders or, for an ALO Order designated as Reserve, as provided for under Rule 7.31E(e)(2)(E).

Day ISO Reserve Orders

The Exchange proposes to amend Rule 7.31E to provide for the use of Day ISO Reserve Orders. The proposed change is not intended to modify any current functionality, but would instead facilitate the combination of two order types currently offered by the Exchange to offer increased efficiency to ETP Holders. As proposed, Day ISO Reserve Orders would, except as otherwise noted, operate consistent with current Rule 7.31E(d)(1) regarding Reserve Orders and current Rule 7.31E(e)(3)(C) regarding Day ISO Orders. To allow for the use of Day ISO

Reserve Orders, the Exchange first proposes to amend Rule 7.31E(d)(1)(C) to include Day ISO Orders among the order types that may be designated as Reserve Orders.

The proposed change is intended to allow Day ISO Orders, as described in Rule 7.31E(e)(3)(C),⁴ to have a displayed quantity, along with non-displayed reserve interest, as described in Rule 7.31E(d)(1). The display quantity of a Day ISO Reserve Order would be replenished as provided in Rules 7.31E(d)(1)(A) and (B), except that the Exchange proposes to add new rule text to Rule 7.31E(d)(1)(B)(ii), which currently provides that the replenish quantity of a non-routable Reserve Order will be assigned a display and working price consistent with the instructions for the order. Because Day ISO Reserve Orders would be non-routable but could not be replenished at their limit price given the specific requirements for ISOs (as described above),⁵ the Exchange proposes to amend Rule 7.31E(d)(1)(B)(ii) to specify that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order, as provided for under paragraph (e)(1) of this Rule.

As currently described in Rule 7.31E(e)(3)(C), a Day ISO Reserve Order, if marketable on arrival, would immediately trade with contra-side interest on the Exchange Book up to its full size and limit price. Currently, Rule 7.31E(e)(3)(C) further provides that any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO. The Exchange proposes two changes to Rule 7.31E(e)(3)(C) to reflect the operation of Day ISO Reserve Orders:

⁴ The Exchange does not currently propose to allow Day ISO ALO Orders (as defined in Rule 7.31E(e)(3)(D)) to be designated as Reserve Orders. Accordingly, the Exchange proposes to amend Rule 7.31E(e)(3)(D) to specify that Day ISO ALOs may not be so designated.

⁵ Consistent with the requirements for ISOs and the Exchange's existing rules governing Day ISOs, a Day ISO Reserve Order, as proposed, would only behave as an ISO upon arrival and would not otherwise be permitted to trade through a protected bid or offer or lock or cross an Away Market.

- The Exchange proposes to amend the second sentence of Rule 7.31E(e)(3)(C) to specify that reserve interest of a Day ISO Reserve Order would not be displayed at its limit price because reserve interest is, by definition, non-displayed and would instead rest non-displayed on the Exchange Book at the order's limit price.
- The Exchange proposes to add new subparagraph (i) under Rule 7.31E(e)(3)(C) to offer ETP Holders the ability to designate a Day ISO Reserve Order to be cancelled if, upon replenishment, it would be displayed at a price other than its limit price for any reason. The Exchange notes that it does not offer this option for Day ISOs not designated as Reserve Orders because such orders would never be displayed at a price other than their limit price. By contrast, a Day ISO Reserve Order could be repriced upon replenishment as described in Rule 7.31E(d)(1)(B)(ii) (as modified by this filing to include Day ISOs designated as Reserve Orders, discussed below).

This proposed change would provide ETP Holders with increased flexibility with respect to order handling and the ability to have greater determinism regarding order processing when Day ISO Reserve Orders would be repriced to display at a price other than their limit price upon replenishment. This designation would be optional, and if not designated to cancel, Day ISO Reserve Orders would function as otherwise described in this filing. The Exchange notes that it already makes this option available for other order types and believes that offering it to Day ISO Reserve Orders would promote consistency in Exchange rules.⁶

⁶ See, e.g., Rules 7.31E(e)(1), 7.31E(e)(2), and 7.31E(e)(3)(D) (permitting Non-Routable Limit Orders, displayed ALO Orders, and Day ISO ALO Orders, respectively, to be designated to cancel if they would be displayed at a price other than their limit price for any reason).

The working price of the reserve interest of a resting Day ISO Reserve Order would be adjusted as provided for in Rule 7.31E(d)(1). Rule 7.31E(d)(1)(E) would also apply to requests to reduce the size of Day ISO Reserve Orders.

Rule 7.31E(d)(1)(F) provides that, if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of the order would not change, but the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBBO uncrosses, the display price and working price of a Reserve Order will be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders. The Exchange proposes to amend Rule 7.31E(d)(1)(F) to provide that the rule would likewise apply to a Reserve Order that is a Day ISO. The Exchange further notes that this proposed change is consistent with the proposed change to Rule 7.31E(d)(1)(B)(ii), which similarly provides that the replenish quantity of a Day ISO Reserve Order would be assigned a display price and working price in the same manner as a Non-Routable Limit Order.

Finally, the Exchange proposes conforming changes to Rule 7.11E(a)(5) and Rule 7.37E(f)(2) to reflect the operation of Day ISO Reserve Orders.

Rule 7.11E(a)(5) sets forth rules governing how Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Bands consistent with the Limit Up-Limit Down Plan. Rule 7.11E(a)(5)(ii) currently provides that if the Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled. The Exchange proposes to amend Rule 7.11E(a)(5)(ii) to clarify its applicability to any portion of a

resting Day ISO that is designated Reserve. Thus, if the Price Bands move and the working price of any portion of a resting Day ISO Reserve Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the entirety of the Day ISO Reserve Order would be cancelled.

Rule 7.37E(f)(2) describes the ISO exception to the Order Protection Rule. Rule 7.37E(f)(2)(A) provides that the Exchange will accept ISOs to be executed in the Exchange Book against orders at the Exchange's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation. Rule 7.37E(f)(2)(B) provides that, if an ISO is marked as "Immediate-or-Cancel," any portion of the order not executed upon arrival will be automatically cancelled; if an ISO is not marked as "Immediate-or-Cancel," any balance of the order will be displayed without regard to whether that display would lock or cross another market center, so long as the order complies with Rule 7.37E(e)(3)(C).⁷ The Exchange proposes to amend Rule 7.37E(f)(2)(B) to specify that, for an ISO not marked as "Immediate-or-Cancel," any displayed portion of such order would be displayed, and any non-displayed portion would remain on the Exchange Book. This proposed change is intended to clarify that the reserve interest of a Day ISO Reserve Order would not be displayed, but could, on arrival only, rest non-displayed at a price that would lock or cross another market center if the member organization has complied with Rule 7.37E(e)(3)(C).

The proposed change is intended to facilitate the combined use of two existing order types available on the Exchange, thereby providing ETP Holders with enhanced flexibility, optionality, and efficiency when trading on the Exchange. The proposed change could also

⁷ Rule 7.37E(e)(3)(C) provides that the prohibition against Locking and Crossing Quotations described in Rule 7.37E(e)(2) does not apply when the Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

promote increased liquidity and trading opportunities on the Exchange, to the benefit of all market participants. The Exchange also believes the proposed change would permit the Exchange to offer functionality similar to that available on at least one other equities exchange, thereby promoting competition among equities exchanges.⁸

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 no later than in the second quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of 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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would allow for the combined use of two existing order types available on the Exchange and permit the Exchange to offer functionality similar to that already available on at least one other equities exchange.¹¹ ETP Holders would be free to choose to use the proposed Day ISO Reserve Order type or not, and the proposed change would not otherwise impact the operation of the Reserve Order or Day ISO

⁸ See, e.g., Nasdaq Stock Market LLC Rule 4702(b)(1)(C) (describing Price to Comply Order, which may be designated with both reserve size and as an ISO).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See note 8, supra.

Order as described in current Exchange rules. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, by expanding the options available to ETP Holders when trading on the Exchange and promoting increased liquidity and additional trading opportunities for all market participants.

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. In addition, as noted above, Exchange believes the proposed rule change would allow the Exchange to offer functionality already available on at least one other equities exchange¹² and thus would promote competition among equities exchanges. The Exchange also believes that, to the extent the proposed change increases 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.

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 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,

¹² See id.

the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The proposal would allow the Exchange to offer functionality similar to that already available on at least one other equities exchange.¹⁷ ETP Holders would have the option to use the proposed Day ISO Reserve Order type, and the proposed change would not otherwise alter the operation of the Reserve Order or Day ISO Order as described in current Exchange rules. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

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

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See note 8, supra.

¹⁸ 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).

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)¹⁹ of the Act 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-17 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-2024-17. This file number should be included on the subject line if email 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 (<https://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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-17 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).