

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101104; File No. SR-NYSEARCA-2024-78)

September 19, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31-E

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 September 9, 2024, NYSE Arca, Inc. (“NYSE Arca” 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 7.31-E regarding the Minimum Trade Size Modifier. 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 7.31-E regarding the Minimum Trade Size (“MTS”) Modifier.

Rule 7.31-E(i)(3) provides that a Limit IOC Order, Non-Displayed Limit Order, MPL Order, or Tracking Order may be designated with an MTS Modifier. Rule 7.31-E(i)(3)(A) currently provides that an MTS must be a minimum of a round lot and that an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order. The Exchange proposes to amend Rule 7.31-E(i)(3)(A) to provide that an MTS may be an odd lot quantity and thus proposes to eliminate rule text currently providing that an MTS must be a minimum of a round lot and that an order with an MTS of less than one round lot would be rejected. The Exchange believes that restricting the use of the MTS Modifier to round lot sizes only is unnecessary and that providing ETP Holders with the option to use the MTS Modifier with an odd lot quantity 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 equity exchanges and believes that this proposed change is consistent with other equity exchanges’ approaches to the use of instructions similar to the MTS Modifier.⁴

⁴ The rules of Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), and Members Exchange (“MEMX”) appear to permit the use of instructions comparable to the MTS Modifier in any size. See EDGA Rules 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated) and 11.6(h) (defining Minimum Execution Quantity instruction); EDGX Rules 11.2 and 11.6(h) (same); MEMX Rules 11.2 and 11.6(f) (same). See also, e.g., IEX Rule 1190(b)(3) (providing that a non-displayed order may be a Minimum Quantity Order and may be an odd lot order).

The Exchange also proposes to amend Rule 7.31-E(i)(3) to include the Discretionary Pegged Order and non-displayed ALO Order as order types that could be designated with an MTS Modifier. This clarifying change is intended only to reflect current behavior, by providing a complete list of the order types that may be designated with an MTS Modifier. The Exchange notes that inclusion of the Discretionary Pegged Order would align Rule 7.31-E(i)(3) with the rules of its affiliate, NYSE American LLC (“NYSE American”), which already provide that a Discretionary Pegged Order may be designated with an MTS Modifier,⁵ thereby promoting consistency in the rules of affiliated exchanges as to the same order type. The Exchange also believes that the inclusion of the non-displayed ALO Order⁶ as an order type that may be designated with an MTS Modifier is consistent with the existing use of the MTS Modifier with non-displayed order types such as Non-Displayed Limit Orders and MPL Orders (including MPL-ALO Orders). Moreover, although the non-displayed ALO Order is a Limit Order that is non-displayed, the Exchange believes that specifically including the non-displayed ALO Order in the text of Rule 7.31-E(i)(3) would reduce ambiguity as to the order types that may be designated with an MTS Modifier.

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 fourth quarter of 2024.

⁵ See NYSE American Rule 7.31E(i)(3) (“A Limit IOC Order, Non-Displayed Limit Order, MPL Order, Tracking Order, Non-Displayed Primary Pegged Order, or Discretionary Pegged Order may be designated with an MTS Modifier.”).

⁶ An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the NYSE Arca Book; an ALO Order may be designated as non-displayed. See Rule 7.31-E(e)(2).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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 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 use the MTS Modifier with odd lot quantities, 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 proposed change would also clarify that the MTS Modifier may be used in conjunction with Discretionary Pegged Orders and non-displayed ALO Orders, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system by updating Exchange rules to ensure that they reflect the current availability of the MTS Modifier and promoting consistency and specificity in Exchange rules as to the use of such modifier with non-displayed order types, as well as consistency with the rules of an affiliated exchange with respect to the Discretionary Pegged Order. The Exchange notes that the proposed change would not otherwise impact the operation of the MTS Modifier as provided under current Exchange rules. The Exchange also believes that the proposed change

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

would align Exchange rules with the use of instructions similar to the MTS Modifier on other equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.⁹

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 proposed change would allow the optional MTS Modifier to be used with an odd lot quantity and accurately reflect the order types that may be designated with an MTS Modifier. The Exchange believes that the proposed change would promote competition among exchanges by offering ETP Holders options available on other equity exchanges and, to the extent the proposed change would increase opportunities for order execution, 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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

⁹ See note 4, *supra*.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6)(iii) 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 so that the proposal may take effect 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 this filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel issues and would allow use of the MTS Modifier with odd lot quantities without delay and promote clarity in Exchange rules as to the order types that may be designated with an MTS Modifier. 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

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)(iii) 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 fulfilled this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 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)¹⁷ 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-NYSEARCA-2024-78 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-NYSEARCA-2024-78. 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

¹⁷ 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-NYSEARCA-2024-78 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.¹⁸

Vanessa A. Countryman,

Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).