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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85064; File No. SR-NYSEArca-2019-03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31-E Relating to the Minimum Trade Size Modifier

February 6, 2019

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 28, 2019, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 the Substance of the Proposed Rule Change*

The Exchange proposes to amend Rule 7.31-E relating to the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Statutory Basis for, the Proposed Rule Change*

1. *Purpose*

The Exchange proposes to amend Rule 7.31-E relating to the Minimum Trade Size (“MTS”) Modifier. Specifically, the Exchange proposes to make the MTS Modifier available for Non-Displayed Limit Orders.<sup>4</sup> The Exchange also proposes to provide additional optionality for ETP Holders using the MTS Modifier with Limit IOC Orders, Non-Displayed Limit Orders, Mid-Point Liquidity (“MPL”) Orders, and Tracking Orders. As proposed, ETP Holders could choose how such orders would trade on arrival to trade either with (i) orders that in the aggregate meet the MTS (current functionality), or (ii) individual orders that each meet the MTS (proposed functionality).

The MTS Modifier is currently available for Limit IOC Orders,<sup>5</sup> MPL Orders,<sup>6</sup> and Tracking Orders.<sup>7</sup> As such, the MTS Modifier is currently available only for orders that are not displayed and do not route. On arrival, both Limit IOC Orders and MPL Orders with an MTS Modifier will trade against contra-side orders in the Exchange Book that in the aggregate, meet

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<sup>4</sup> See Rule 7.31-E(d)(2). In sum, A Non-Displayed Limit Order is a Limit Order that is not displayed and does not route. Id.

<sup>5</sup> See Rule 7.31-E(b)(2)(A). In sum, a Limit Order designated IOC is to be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, and the quantity not so traded is cancelled. Id.

<sup>6</sup> See Rule 7.31-E(d)(3). In sum, an MPL Order is a “Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO.” Id.

<sup>7</sup> See Rule 7.31-E(d)(4). In sum, a Tracking Order is an order to buy (sell) with a limit price that is not displayed, does not route, must be entered in round lots and designated Day, and will trade only with an order to sell (buy) that is eligible to route.

the MTS.<sup>8</sup> Once resting, MPL Orders and Tracking Orders with an MTS Modifier function similarly: if a contra-side order does not meet the MTS, the incoming order will not trade with and may trade through the resting order with the MTS Modifier. In addition, both MPL Orders and Tracking Orders with an MTS Modifier will be cancelled if such orders are traded in part or reduced in size and the remaining quantity is less than the MTS.

The Exchange proposes to amend its rules to make MTS Modifier functionality available for an additional non-displayed order that does not route, i.e., Non-Displayed Limit Orders. The Exchange also proposes to add an option that an order with an MTS Modifier would trade on entry only with individual orders that each meet the MTS. This proposed change is based on the rules of its affiliate, NYSE American LLC (“NYSE American”), which offers the option for orders with an MTS to trade on entry only with individual orders that each meet the MTS of the incoming order.<sup>9</sup> Both of these proposed changes are also based on the rules of the Nasdaq Stock Market LLC (“Nasdaq”) and Investors Exchange LLC (“IEX”), which both offer minimum trade size functionality for orders that are not displayed and that do not route.<sup>10</sup>

Nasdaq and IEX, as well as Cboe BYX Exchange, Inc. (“BYX”), Cboe BZX Exchange, Inc.

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<sup>8</sup> Tracking Orders, including Tracking Orders with an MTS Modifier, are passive orders that do not trade on arrival.

<sup>9</sup> See NYSE American Rule 7.31E(i)(3)(B). See also Securities Exchange Act Release No. 81672 (September 21, 2017), 82 FR 45099 (September 27, 2017) (SR-NYSEAMER-2017-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31E Relating to the Minimum Trade Size Modifier for Additional Order Types and Expanding the Minimum Trade Size Modifier for Existing Order Types). The Exchange understands that NYSE American as well as its other affiliated exchanges, the New York Stock Exchange, Inc. (“NYSE”), and NYSE National, Inc. (“NYSE National”, together with the Exchange and NYSE, the “Affiliate SROs”) intend to file similar proposed rule changes with the Commission to extend the availability of their respective MTS modifiers to Non-Displayed Limit Orders.

<sup>10</sup> See Nasdaq Rule 4703(e) (Nasdaq’s “Minimum Quantity Order” may not be displayed and will be rejected if it includes an instruction to route) and IEX Rule 11.190(b)(11)(A) (IEX’s “Minimum Quantity Order” or “MQTY” is a non-displayed, non-routable order).

(“BZX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”, together with BYX, BZX, and EDGA, the “Cboe Equity Exchanges”), also all offer the option for orders with a minimum trade size to trade on entry only with individual orders that each meet the minimum trade size condition of the incoming order.<sup>11</sup>

Rule 7.31-E(i)(3) currently states that on arrival, an order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the NYSE Arca Book that in the aggregate meet such order’s MTS. As amended, Rule 7.31-E(i)(3)(B) would now require an ETP Holder to specify one of the following instructions with respect to how an order with an MTS Modifier would trade on arrival (new text underlined):

- (i) An order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order’s MTS[.]; or
- (ii) An order to buy (sell) with an MTS Modifier will trade with individual sell (buy) order(s) in the Exchange Book that each meets such order’s MTS.

Proposed paragraph (i)(3)(B)(ii) is new and reflects the Exchange’s proposal to add an alternative to how an order with an MTS Modifier would trade on arrival. An order with an MTS Modifier that is to trade upon entry only with individual orders that each meet the MTS

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<sup>11</sup> See Nasdaq Rule 4703(e) (Nasdaq’s “Minimum Quantity” order attribute allows for a Nasdaq participant to specify one of two alternatives to how a Minimum Quantity Order would be processed at the time of entry, one of which is that “the minimum quantity condition must be satisfied by execution against one or more orders, each of which must have a size that satisfies the minimum quantity condition”) and IEX Rule 11.190(b)(11)(G)(iii)(B) (On arrival, IEX’s “Minimum Execution Size with All-or-None Remaining” qualifier for IEX’s MQTY executes against each willing resting order in priority, provided that each individual execution size meets its effective minimum quantity.) See also BYX Rule 11.9(c)(5); BZX Rule 11.9(c)(5); EDGA Rule 11.6(h); and EDGX Rule 11.6(h) (The Cboe Equity Exchanges each allow a User to alternatively specify the order not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the book).

would execute against resting orders in accordance with Rule 7.36-E, Order Ranking and Display, until it reaches an order that does not satisfy the MTS, at which point it would be posted or cancelled in accordance with the terms of the order. This proposed rule text is also based on NYSE American Rule 7.31E(i)(3)(B).<sup>12</sup> Proposed Exchange Rule 7.31-E(i)(3)(B)(i) would describe the existing functionality as one of the instructions that would be available to ETP Holders.

As discussed above, the addition of this instruction for how orders with an MTS Modifier would trade on entry is based on the rules of NYSE American, Nasdaq, IEX, and the Cboe Equity Exchanges.<sup>13</sup>

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Because of the technology changes associated with this 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 second quarter of 2019.

## 2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>15</sup> 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

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<sup>12</sup> See supra note 9.

<sup>13</sup> See supra notes 9 and 11.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

public interest.

The Exchange believes that the proposal to expand the availability of the Exchange's existing MTS Modifier to an additional non-displayed, non-routable order, e.g., Non-Displayed Limit Orders, would 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, because the proposed rule change is based on similar minimum trade size functionality on Nasdaq and IEX, which both similarly make minimum trade size functionality available to non-displayed, non-routable orders.<sup>16</sup>

The Exchange also believes that the proposal would 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 because it would provide ETP Holders with the option for orders with a MTS Modifier to trade on entry only with individual orders that each meets the MTS of the incoming order, thereby providing ETP Holders with more control in how such orders could execute. The proposed rule change is based on similar options available for users of minimum trade size functionality on the Exchange's affiliate, NYSE American, as well as Nasdaq, IEX, and the Cboe Equity Exchanges.<sup>17</sup> The Exchange further believes that this proposed option would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would allow ETP Holders to provide an instruction that an order with an MTS Modifier would not trade with orders that are smaller in size than the MTS for such order, thereby providing ETP Holders with more control over when an order with an MTS Modifier may be executed.

B. *Self-Regulatory Organization's Statement on Burden on Competition*

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<sup>16</sup> See supra note 10.

<sup>17</sup> See supra notes 9 and 11.

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 designed to increase competition by making available on the Exchange functionality that is already available on Nasdaq, IEX, and the Cboe Equity Exchanges. The Exchange also believes that the proposed rule change would promote competition by providing market participants with an additional venue to which to route non-displayed, non-routable orders with an MTS Modifier.

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 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) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

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 otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-03 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-2019-03. 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, D.C. 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such 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-NYSEArca-2019-03, 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.<sup>20</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

<FRDOC> [FR Doc. 2019-01945 Filed 2-11-19; 8:45 am]  
<BILCOD> BILLING CODE 8011-01-P  
[FR Doc. 2019-01945 Filed: 2/11/2019 8:45 am; Publication Date: 2/12/2019]