

is associated with Index Fund Shares but not Managed Fund Shares. Therefore, based on the information before the Commission, the Commission is unable to determine that the proposal is consistent with Section 6(b)(5) of the Act.

In support of its proposal, the Exchange also argues that any series of Index Fund Shares listed on the Exchange must meet all requirements applicable under the Investment Company Act of 1940, including Rule 35d-1,<sup>35</sup> which according to the Exchange provides assurance that there is significant overlap between the portfolio holdings and the underlying index.<sup>36</sup>

The Exchange did not explain the extent to which generically listed Index Fund Shares would have names that are governed by Rule 35d-1 or why the Exchange believes any overlap that would result from compliance with that rule would be sufficient to satisfy the relevant standard under the Exchange Act.

The Exchange also did not discuss any other specific requirements that would assure a significant overlap between the portfolio holdings and the underlying index for all current and future generically listed Index Fund Shares. Therefore, based on the information before the Commission, the Commission is unable to determine whether the portfolio composition for all of the Exchange's generically listed Index Fund Shares would necessarily have a significant overlap with the index composition, such that application of the generic listing standards to the portfolio holdings would assure that the index also meets or only narrowly misses the generic listing standards.

Finally, in support of its proposal, the Exchange asserts that the index methodology for an index underlying a series of Index Fund Shares is out of the control of the issuers of the products, and that it is problematic to require an issuer to ensure that the underlying index meets listing standards on an ongoing basis.<sup>37</sup> According to the Exchange, the proposal would provide issuers of Index Fund Shares with a greater degree of control over whether their products meet their ongoing listing obligations.<sup>38</sup>

The Commission believes that the Exchange has not demonstrated why issuers' control over a fund's portfolio composition would be responsive to the potential index manipulation issue discussed above. In particular, if the portfolio meets the generic listing standards (because the issuer has control over the portfolio composition and can construct the portfolio to meet the generic listing standards) but the index does not, and the performance of the portfolio tracks the performance of the manipulated index, the Exchange did not discuss whether the effects of the index manipulation might be reflected in the price of the Index Fund Shares, and why the potential (if any) for the effects of the index manipulation to be reflected in the price of the Index Fund Shares should not be a concern under Section 6(b)(5) of the Act.

For the reasons discussed above, the Commission concludes that the record before it does not provide a basis to conclude that the Exchange has met its burden under the Act and the Commission's Rules of Practice to demonstrate that its proposed rule change is consistent with Section 6(b)(5) of the Act.<sup>39</sup>

#### IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the

competition, and capital formation, *see* 15 U.S.C. 78c(f), and the Exchange's assertion that its proposal would enhance competition among market participants and create greater investor confidence in exchange-traded products generally because there will be a greater degree of certainty that Index Fund Shares will not be subject to regulatory action or delisting. *See* Amendment No. 1, *supra* note 6, at 10-11 and Exchange Letter, *supra* note 11, at 6. The Exchange did not provide any information to support its assertion that the proposal would enhance competition and did not provide any information to support its assertion that the proposal would create greater investor confidence other than the proposal would provide a greater degree of certainty that Index Fund Shares would not be subject to regulatory action or delisting. But even if this proposal has the potential to enhance competition and create greater investor confidence, for the reasons discussed throughout, the Commission must disapprove the proposed rule change in light of its inability, on the current record, to find that it is consistent with the Act.

<sup>39</sup> The Order Instituting Proceedings sought comment on several specific issues, including the issue of manipulation of the underlying index. For the reasons discussed above, the Commission does not find that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and therefore the Commission does not believe it is necessary to address the other issues raised in the Order Instituting Proceedings.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.<sup>41</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-CboeBZX-2018-044), is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2019-04705 Filed 3-13-19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85274; File No. SR-NYSE-2019-08]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7.16, 7.18, 7.31, 7.34, 7.37, and 7.38

March 8, 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 February 22, 2019, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 Rules 7.16 (Short Sales), 7.18 (Halts), 7.31 (Orders and Modifiers), 7.34 (Trading Sessions), 7.37 (Orders Execution and Routing), and 7.38 (Odd and Mixed Lots). 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.

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>35</sup> 17 CFR 270.35d-1.

<sup>36</sup> *See* Amendment No. 1, *supra* note 6, at 9-10 and Exchange Letter, *supra* note 11, at 3-4.

<sup>37</sup> *See* Amendment No. 1, *supra* note 6, at 7 and Exchange Letter, *supra* note 11, at 4-5.

<sup>38</sup> *See* Amendment No. 1, *supra* note 6, at 7 and Exchange Letter, *supra* note 11, at 5. In disapproving the proposal, the Commission has considered the proposal's impact on efficiency,

## 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 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 Rules 7.16 (Short Sales), 7.18 (Halts), 7.31 (Orders and Modifiers), 7.34 (Trading Sessions), 7.37 (Order Execution and Routing), and 7.38 (Odd and Mixed Lots). The proposed rule changes are intended to provide additional specificity in the Exchange's rules, streamline order processing when a security is halted or paused, and reduce operational complexity when transitioning to continuous trading.

#### Rule 7.16 (Short Sales)

Rule 7.16 establishes requirements relating to short sales. Rule 7.16(f)(5) sets forth how short sale orders are processed during a Short Sale Period, which is defined in Rule 7.16(f)(4). More specifically, Rule 7.16(f)(5)(B) provides how the Exchange processes sell short Priority 1 and Priority 3 Orders during a Short Sale Period.<sup>4</sup> The current rule provides that such orders, which are not displayed, are re-priced at a Permitted Price<sup>5</sup> and are continuously re-priced at a Permitted Price as the national best bid moves both up and down. Accordingly, under the current rule, during a Short Sale Period, orders ranked Priority 1—Market Orders, are

<sup>4</sup> Pursuant to Rule 7.36(e)(1), an order ranked "Priority 1—Market Orders," which is referred to in Rule 7.16(f)(5)(B) as a "Priority 1 Order" refers to unexecuted Market Orders. Pursuant to Rule 7.31(a)(1)(A), a Market Order may be held undisplayed on the Exchange Book. Pursuant to Rule 7.36(e)(3), an order ranked "Priority 3—Non-Display Orders," which is referred to in Rule 7.16(f)(5)(B) as a "Priority 3 Order" refers to non-marketable Limit Orders for which the working price is not displayed, including the reserve interest of Reserve Orders.

<sup>5</sup> The Permitted Price is one minimum price variation above the current NBB. See Rule 7.16(f)(5)(A).

processed in the same manner as orders ranked Priority 3—Non-Display Orders.

With this proposed rule change, the Exchange proposes to extend the functionality currently applicable to how sell short Market Orders on its affiliated exchanges, NYSE Arca, Inc. ("NYSE Arca") and NYSE American LLC ("NYSE American") function during an auction to how sell short Market Orders would be processed on the Exchange during continuous trading, *i.e.*, that during a Short Sale Period, sell short Market Orders would be converted into display orders and would be ranked and allocated as a displayed order.<sup>6</sup> To effect this change, the Exchange proposes to delete references to "Priority 1 Orders" and "Market Orders" in current Rule 7.16(f)(5)(B) and add new Rule 7.16(f)(5)(C) that would be applicable only to Market Orders. Orders ranked Priority 3—Non-Display Orders would continue to be processed in the same manner as they are today under Rule 7.16(f)(5)(B).

Proposed new Rule 7.16(f)(5)(C) would provide that, during a Short Sale Period, a sell short Market Order would be ranked Priority 2—Display Orders and would be subject to Trading Collars specified in Rule 7.31(a)(1)(B)(i).<sup>7</sup>

As discussed below, when a sell short Market Order is ranked as Priority 2—Display Orders, it would be assigned a limit price of one MPV above \$0.00. The Exchange believes that applying Limit Order Price Protection when such orders are ranked as Priority 2—Display Orders would result in all such orders being rejected as being priced too far away from the NBBO.<sup>8</sup> Accordingly, to ensure that there is a mechanism available to prevent orders from causing significant price dislocation during a Sell Short Period, the Exchange proposes that such orders would continue to be subject to Trading Collars, which are applicable to Market

<sup>6</sup> See Commentary .01(a) to NYSE Arca Rule 7.35-E and Commentary .01(a) to NYSE American Rule 7.35E, which both provide that for purposes of pricing an auction and ranking orders for allocation in an auction, sell short Market Orders that are adjusted to a Permitted Price would be processed as Limit Orders ranked Priority 2—Display Orders.

<sup>7</sup> During Core Trading Hours, the Trading Collar is based on a price that is a specified percentage away from the consolidated last sale price and is continuously updated based on market activity. If there is no consolidated last sale price on the same trading day, the Exchange uses the last Official Closing Price for the security. See Rule 7.31(a)(1)(B)(i).

<sup>8</sup> Pursuant to Rule 7.31(a)(2)(B), a Limit Order to buy (sell) is subject to Limit Order Price Protection and will be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage away from the NBO (NBB).

Orders, rather than to Limit Order Price Protection.

To address what would happen when a Short Sale Period is triggered when there is a resting Market Order on the Exchange Book, proposed Rule 7.16(f)(5)(C) would rule further provide that if a Short Sale Period is triggered when an order ranked Priority 1—Market Orders is resting on the Exchange Book, such resting order would be converted to an order ranked Priority 2—Display Orders. This could happen if there is an unexecuted Market Order that is undisplayed on the Exchange Book pursuant to Rule 7.31(a)(1)(A). In such case, the resting order would be converted to an order ranked Priority 2—Display Orders and would be ranked and allocated for all purposes as a displayed order. If the Short Sale Period ends intraday, such order would be converted back to an order ranked Priority 1—Market Orders.

While a sell short Market Order would be ranked and allocated as Priority 2—Display Orders during a Short Sale Period, not all functionality applicable to displayed orders would be applicable to such Market Orders. As proposed, when ranked as Priority 2—Display Orders, such order would be (1) assigned a limit price of one MPV above \$0.00; (2) assigned a working and (during Core Trading Hours) a display price that is the higher of the Permitted Price or one MPV above the lower Trading Collar as determined under Rule 7.31(a)(1)(B)(i); and (3) cancelled if the Permitted Price is or becomes lower than the Lower Price Band, as provided in Rule 7.11(a)(5).

The Exchange believes that assigning a Market Order with a limit price equal to one MPV above \$0.00 would provide for a limit price for such order while it is functioning as an order ranked Priority 2—Display Orders. However, as noted above, such limit price would not be used for purposes of Limit Order Price Protection. Rather, the Exchange proposes to continue applying the Trading Collars applicable to Market Orders even if such order converts to displayed interest. Next, the Exchange believes that assigning such order a working and display price (during Core Trading Hours) that is the higher of the Permitted Price or one MPV above the lower Trading Collar is consistent both with how sell short Priority 2—Display Orders are displayed and priced during a Short Sale Period and with the proposal that Trading Collars would continue to be applicable to such orders. Not displaying such orders until Core Trading Hours is also consistent with the continued behavior that such Market Orders are not eligible to trade until the

Core Trading Session. Finally, the Exchange proposes to cancel such order if the Permitted Price (*i.e.*, the displayed price of the order) is or becomes lower than the Lower Price Band, which is consistent with how Market Orders are processed pursuant to Rule 7.11(a)(5)(A)(i) if they cannot be traded or routed at prices at or within the Price Bands. In other words, if the Permitted Price would be a price at or below the Lower Price Band, the Exchange proposes to cancel such order rather than repricing it once again to the Lower Price Band, even though the Lower Price Band would be at a price higher than the Permitted Price. Thus, no short sale order would be executed (effected) at or below the NBB during a Short Sale Period.

With the adoption of proposed Rule 7.16(f)(5)(C), the Exchange further proposes to re-number each of current sub-paragraphs (C)–(H) of Rule 7.16(f)(5) as (D)–(I) without making any substantive change to those rules.

The Exchange proposes to make a related change to Rule 7.37. Pursuant to current Rule 7.37(b), all orders ranked Priority 1—Market Orders are allocated first on time, and such allocation is agnostic to whether such order was entered by a Floor Broker Participant or Book Participant.<sup>9</sup> Accordingly, when the Exchange is not in a Short Sale Period, short sale Market Orders entered by a Floor Broker Participant are not eligible for a parity allocation. By contrast, Priority 2—Display Orders are allocated on parity by Participant.

The Exchange believes that when a short sale Market Order is converted to an order ranked Priority 2—Display Orders during a Short Sale Period, it should have the same relative priority with a short sale Market Order entered by the Book Participant as it would have when the Exchange is not in a Short Sale Period. Because orders ranked Priority 2—Display Orders are allocated on parity by Participant, to effect this continuity of relative priority, the Exchange proposes to add Commentary .01 to Rule 7.37 to provide that when, during a Short Sale Period, a short sale Market Order entered by a Floor Broker Participant is ranked as Priority 2—Display Orders pursuant to proposed Rule 7.16(f)(5)(C), such order would be included in the Book Participant for purposes of an allocation under Rule 7.37(b). The Exchange believes that this proposed rule is consistent with how

Market Orders are allocated when the Exchange is not in a Short Sale Period, *i.e.*, short sale Market Orders from a Floor Broker Participant are not distinguished from orders entered by the Book Participant.

#### Rule 7.18, Halts

Rule 7.18(b) states that the Exchange does not conduct Trading Halt Auctions in UTP Securities and sets forth how the Exchange processes new and existing orders in UTP Securities during a UTP Regulatory Halt.<sup>10</sup> Rule 7.18(b)(1) states that during a UTP Regulatory Halt the Exchange will cancel any unexecuted portion of Market Orders and orders not eligible to trade in the current trading session on the Exchange Book.<sup>11</sup> The Exchange proposes to amend this Rule to further provide that orders that are not displayed would also be cancelled during a UTP Regulatory Halt. To reflect this change, the Exchange proposes to amend Rule 7.18(b)(1) to provide that Non-Displayed Limit Orders,<sup>12</sup> Non-Displayed Primary Pegged Orders,<sup>13</sup> Mid-Point Liquidity (“MPL”) Orders,<sup>14</sup> and Last Sale Peg Orders<sup>15</sup> would also be canceled during a UTP Regulatory Halt. The Exchange believes that cancelling these non-displayed orders during a UTP Regulatory Halt would streamline order processing once trading resumes.

#### Rule 7.31, Orders and Modifiers

The Exchange proposes to make a number of changes to Rule 7.31, each of which are designed to streamline order processing.

Rule 7.31(a)(2)(C) currently describes how the Exchange re-prices resting orders under specified circumstances. Specifically, if a BB (BO) that is locked or crossed by an Away Market PBO (PBB) is cancelled, executed or routed and the next best-priced resting Limit Order(s) on the Exchange Book that would become the new BB (BO) would have a display price that would lock or cross the PBO (PBB), such Limit Order(s) to buy (sell) will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Such Limit Orders are re-priced when the PBBO is updated, including if the Exchange

receives a Day ISO that would result in at least a round lot being displayed as the new BBO.

The Exchange proposes to amend this text to provide that the arrival of any-sized Day ISO would result in the repricing of such resting orders. The arrival of a Day ISO of any size provides the Exchange with notice that the member organization that has entered such order has met the requirement under Rule 7.31(e)(3)(A)(ii) to simultaneously route one or more additional Limit Orders to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets. Accordingly, the Exchange would adjust the PBBO based on the arrival of any-sized Day ISO. Because the PBBO would be adjusted based on the arrival of any-sized Day ISO, the Exchange believes it would no longer be necessary to wait for a round-lot sized Day ISO before repricing orders under Rule 7.31(a)(2)(C). Accordingly, the Exchange proposes to delete the following text in the second sentence of current Rule 7.31(a)(2)(C)—“and would result in at least a round lot being displayed as a new BB (BO)” —and the third and last sentence of current Rule 7.31(a)(2)(C).

Rule 7.31(a)(2)(C) currently describes how the Exchange re-prices resting orders under specified circumstances. Specifically, if a BB (BO) that is locked or crossed by an Away Market PBO (PBB) is cancelled, executed or routed and the next best-priced resting Limit Order(s) on the Exchange Book that would become the new BB (BO) would have a display price that would lock or cross the PBO (PBB), such Limit Order(s) to buy (sell) will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Such Limit Orders are re-priced when the PBBO is updated, including if the Exchange receives a Day ISO that would result in at least a round lot being displayed as the new BBO.

The Exchange proposes to amend this text to provide that the arrival of any-sized Day ISO would result in the repricing of such resting orders. The arrival of a Day ISO of any size provides the Exchange with notice that the ETP Holder that has entered such order has met the requirement under Rule 7.31(e)(3)(A)(ii) to simultaneously route one or more additional Limit Orders to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets. Accordingly, the Exchange would adjust the PBBO based on the arrival of any-sized Day ISO. Because the PBBO would be adjusted

<sup>10</sup> A “UTP Regulatory Halt” is defined in Rule 1.1 as a trade suspension, halt, or paused called by the UTP Listing Market in a UTP Security that requires all market centers to halt trading in that security. The terms UTP Security and UTP Listing Market are also defined in Rule 1.1.

<sup>11</sup> See Rule 1.1(i).

<sup>12</sup> See Rule 7.31(d)(2).

<sup>13</sup> See Rule 7.31(h)(4).

<sup>14</sup> See Rule 7.31(d)(3).

<sup>15</sup> See Rule 7.31(i)(4).

<sup>9</sup> The term “Participant” is defined in Rule 7.36(a)(5) to mean, for purposes of a parity allocation, a Floor broker trading license (each, a “Floor Broker Participant”) or orders collectively represented in the Exchange Book that have not been entered by a Floor broker (“Book Participant”).

based on the arrival of any-sized Day ISO, the Exchange believes it would no longer be necessary to wait for a round-lot sized Day ISO before repricing orders under Rule 7.31(a)(2)(C). Accordingly, the Exchange proposes to delete the following text in the second sentence of current Rule 7.31(a)(2)(C)—“and would result in at least a round lot being displayed as a new BB (BO)”—and the third and last sentence of current Rule 7.31(a)(2)(C).

The Exchange also proposes to provide additional specificity in Rule 7.31(d)(4)(B) for D Orders<sup>16</sup> and Rule 7.31(h)(2)(B) for Primary Pegged Orders regarding how the display price and working price of such orders would be adjusted when the PBBO is locked or crossed.<sup>17</sup> Specifically, the Exchange proposes to specify that D Orders and Primary Pegged Orders would be re-priced whenever a Limit Order is re-priced pursuant to Rules 7.31(a)(2)(C). Re-pricing a D Order and Primary Pegged Order like a Limit Order pursuant to Rule 7.31(a)(2)(C) ensures that if the PBBO is locked or crossed, a resting D Order and Primary Pegged Order would not be re-priced to a locking or crossing price, for example, if the Exchange BBO changes.<sup>18</sup> To effect this change, the Exchange proposes to amend Rule 7.31(h)(2)(B) to specify that if a resting Limit Order on the Exchange Book is assigned a new display price and working price pursuant to Rules 7.31(a)(2)(C) and the PBBO is still locked or crossed, a resting Primary Pegged Order would also be assigned a new display price and working price pursuant to Rule 7.31E(a)(2)(C). The Exchange proposes similar text for proposed Rule 7.31(d)(4)(B)(i) relating to D Orders. The proposed text represents current functionality for Primary Pegged Orders and proposed functionality that will be available when D Orders are implemented on Pillar. The Exchange believes that this proposed rule change

would provide clarity and transparency in Exchange rules of when a D Order and Primary Pegged Order would be re-priced consistent with Rule 7.31(a)(2)(C).

#### Rule 7.34, Trading Sessions

Rule 7.34(c)(1) describes orders entry during the Early Trading Session.<sup>19</sup> Rule 7.34(c)(1)(B) states that Limit Orders designated as IOC will be rejected if entered before the Early Trading Session begins. The Exchange proposes to amend this Rule to further provide that orders that are not displayed would also be rejected if entered before the Early Trading Session begins. To reflect this change, the Exchange proposes to amend Rule 7.34(c)(1)(B) to provide that Non-Displayed Limit Orders, MPL Orders, and Last Sale Peg Orders would also be rejected if entered before the Early Trading Session begins. Similar to how the Exchange proposes to cancel non-displayed orders during UTP Regulatory Halt, the Exchange believes that rejecting these non-displayed orders when the Exchange is not engaged in continuous trading would reduce operational complexity when the Exchange transitions to continuous trading. Member organizations seeking to enter these order types may do so once the Early Trading Session begins. The Exchange also proposes to specify that Rule 7.34(c)(1)(B) applies to orders in UTP Securities as only UTP Securities are currently traded on the Exchange's Pillar platform.

#### Rule 7.38, Odd and Mixed Lots

The Exchange proposes to amend Rule 7.38 relating to Odd and Mixed Lots. Rule 7.38 sets forth requirements relating to odd lot and mixed lot trading on the Exchange. Rule 7.38(b) further provides that round lot, mixed lot, and odd lot orders are treated in the same manner on the Exchange, provided that the working price of an odd lot order is adjusted both on arrival and when resting on the Exchange Book based on the limit price of the order. Currently, if the limit price of an odd lot order to buy (sell) is at or below (above) the PBO (PBB), the order has a working price equal to the limit price. If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), the order has a working price equal to the PBO (PBB). The rule further provides that if the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB)

and the PBBO is crossed, the order has a working price equal to the PBB (PBO).

Under the current rule, although the working price of an odd lot order is adjusted based on the PBBO, the display price of an odd lot order ranked Priority 2—Display Orders is not adjusted based on the PBBO. Additionally, the rule provides that an odd lot order ranked Priority 2—Display Orders will not be assigned a new working time if its working price is adjusted under the rule. If the display price of an odd lot order to buy (sell) is above (below) its working price, the order is ranked and allocated based on its display price. As a result, an odd lot bid or offer can be displayed on the Exchange's proprietary data feeds at a price that appears to cross the PBBO, even if such order would not be eligible to trade at that price.

The Exchange proposes to amend Rule 7.38(b) to provide that the display price of an odd lot order would be adjusted whenever the working price is adjusted. To effect this change, the Exchange proposes to amend current Rule 7.38(b)(1) to provide that the working and display price of an odd lot order would be adjusted both on arrival and when resting on the Exchange Book. The Exchange further proposes to break current Rule 7.38(b)(1) into subparagraphs (A)–(C) so that the rule provides how odd lot orders are ranked and executed under each of the instances provided in the current rule that are described above.

Proposed Rule 7.38(b)(1)(A) would provide that if the limit price of an odd lot order to buy (sell) is at or below (above) the PBO (PBB), the order would have a working price and display price equal to the limit price of the order. This proposed rule text does not change any functionality, but rather, provides greater specificity of what the display price would be when the limit price of an odd lot order is not through the PBBO.

Proposed Rule 7.38(b)(1)(B) would provide that if the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), the order would have a working price and display price equal to the PBO (PBB) unless the order's instruction requires a display price to be different from the PBBO. This proposed rule text represents new functionality that the display price of an odd lot order would be adjusted at the same time as the working price is currently adjusted for such order. This proposed amendment does not change the price at which such odd-lot order would be eligible to trade, only the price at which it is displayed on the Exchange's proprietary data feeds. The proposed

<sup>16</sup> A D Order is also an order to buy (sell) with a working price that is pegged to the PBB (PBO), but includes the additional ability to exercise discretion up (down) to the limit price of the order. See Rule 7.31(d)(4).

<sup>17</sup> Pursuant to Rule 7.31(h)(2), a Primary Pegged Order is a displayed Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed.

<sup>18</sup> For example, if the PBBO is 10.00 × 10.02, and Exchange's BB is 10.00, a Primary Pegged Order to buy would peg to that 10.00. If next, an Away Market PBO is displayed at 9.98, crossing the Exchange BB, pursuant to Rule 7.31–E(h)(2)(B), the Primary Pegged Order would remain displayed at 10.00. If next, the 10.00 BB on the Exchange cancels, the Primary Pegged Order would need to reprice, but at that point, the PBBO is crossed because of the Away Market PBO of 9.98. In this scenario, the Primary Pegged Order would be repriced to 9.97 as provided for in Rule 7.31(a)(2)(C).

<sup>19</sup> The Early Trading Session begins at 7:00 a.m. Eastern Time and concludes at the commencement of the Core Trading Session. See Rule 7.34(a)(1). The Core Trading Session begins at 9:30 a.m. Eastern Time. See Rule 7.34(a)(2).

rule text includes that the display price would be adjusted to the contra-side PBBO unless the order's instruction requires a display price to be different from the PBBO to account for those order types that, by their terms, do not allow the display price to be equal to a contra-side PBBO. For example, a Non-Routable Limit Order does not have a display price equal to the contra-side PBBO.<sup>20</sup> Accordingly, if an odd lot order were to be a Non-Routable Limit Order, pursuant to that order's instructions, it would have a display price different from the contra-side PBBO.

Proposed Rule 7.38(b)(1)(C) would address what the display price of an odd lot order would be if the PBBO is locked or crossed. The Exchange proposes to expand the current rule text to include locked markets and add that both the display price and working price would be adjusted to the same-side PBBO if the PBBO is locked or crossed. Accordingly, as proposed, if the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB) and the PBBO is locked or crossed, the order would have a working price and display price equal to the PBB (PBO). The proposed rule would further provide that the working price and the display price of such odd lot order would not be adjusted again until the PBBO unlocks or uncrosses.

Additionally, the Exchange proposes to delete the last two sentences of current Rule 7.38(b)(1) regarding the display price of odd lot orders and their ranking given the changes proposed to the current rule regarding the display price of an odd lot order render this text moot. By deleting this rule text, the general rules governing when a working time is assigned to an order, as specified in Rule 7.36(f)(2), would be applicable to odd lot orders.

\* \* \* \* \*

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 Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>22</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 public interest because it would provide additional specificity in the Exchange's rules, streamline order processing when a security is halted or paused, and reduce operational complexity when transitioning to continuous trading.

*Rules 7.16, Short Sales, and 7.37, Order Execution and Routing.* The Exchange believes that the proposed processing of sell short Market Orders during a Short Sale Period, as proposed in Rule 7.16(f)(5)(C), would remove impediments to and perfect the mechanism of a fair and orderly market because it would use a method of processing of sell short Market Orders that is already in place on auctions on NYSE Arca and NYSE American. As described in Commentary .01(a) to NYSE Arca Rule 7.35-E and Commentary .01(a) to NYSE American Rule 7.35E, during a Short Sale Period, sell short Market Orders are currently processed as Limit Orders ranked Priority 2—Display Orders. The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to apply this functionality to how sell short Market Orders are processed during continuous trading. The Exchange further believes that because Market Orders would be assigned a limit price of one MPV above \$0.00, it would remove impediments to and perfect the mechanism of a free and open market for sell short Market Orders that have been converted to an order ranked Priority 2—Display Orders to continue to be subject to Trading Collars and be cancelled if the Permitted Price is equal to or below the Lower Price Band. The Exchange believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange so that such orders are handled by the Exchange consistent with Regulation SHO. The Exchange also believes that the proposed functionality related to the processing of short sale orders will assist member organization in executing or displaying their orders consistent with Regulation SHO. The Exchange further believes that the proposed amendment to Rule 7.37 to process a short sale Market Order entered by a Floor Broker Participant that has been ranked as Priority 2—Display Orders as part of the Book Participant for purposes

of a parity allocation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would maintain continuity of the relative priority of sell short Market Orders entered by both a Floor Broker Participant and the Book Participant in the absence of a Short Sale Period.

*Rule 7.18, Halts.* The proposed change to Rule 7.18(b) to cancel certain non-displayed orders in UTP Securities during a UTP Regulatory Halt promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system because it would reduce the operational complexity of processing these orders following a halt or pause.

*Rule 7.31, Orders and Modifiers.* The Exchange believes that the proposed amendment to Rule 7.31(a)(2)(C) would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing specificity regarding when resting orders would be re-priced due to the arrival of a Day ISO. Specifically, as proposed, because any-sized Day ISO would result in a new PBBO, it is not necessary for an arriving Day ISO to result in a round lot or more being displayed as a new BBO before resting orders would be re-priced under Rule 7.31(a)(2)(C). The Exchange therefore believes that this proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote the display of orders at their limit price without locking or crossing the PBBO.

Amending Rules 7.31(d)(4)(B) and 7.31(h)(2)(B) to describe when resting D Orders and Primary Pegged Orders would be re-priced pursuant to Rule 7.31(a)(2)(C) removes impediments to, and perfects the mechanism of, a free and open market and a national market system because it does not propose new functionality, but rather provides additional specificity in the Exchange's rules regarding the operation of D Orders and Primary Pegged Orders such that it prevents a resting D Order and Primary Pegged Order from being re-priced to peg to a locked or crossed market. This change does not alter the operation of Primary Pegged Orders. Rather, it would further clarify the Exchange's rules regarding when a Primary Pegged Order would be re-priced to avoid pegging to a locked or crossed PBBO. Proposed subparagraph (i) to Rule 7.31(d)(4)(B) would provide that D Orders would be re-priced in a similar manner as Primary Pegged Orders.

<sup>20</sup> See Rule 7.31(e)(1).

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

*Rule 7.34, Trading Sessions.* The proposed changes to Rule 7.34(c)(1)(B) promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system because rejecting Non-Displayed Limit Orders, MPL Orders, and Last Sale Peg Orders entered before the Early Trading Session begins would reduce operational complexity when the Exchange transitions to continuous trading. It would also streamline order processing when the Exchange begins continuous trading. Member organizations seeking to enter these order types may do so once the Early Trading Session begins. Amending Rule 7.34(c)(1)(B) to specify that it applies to UTP Securities clarifies the rule's application as only UTP Securities are currently traded on the Exchange's Pillar platform.

*Rule 7.38, Odd and Mixed Lots.* The Exchange believes that the proposed processing of odd lot orders would remove impediments to and perfect the mechanism of a fair and orderly market because the proposed change would align the working price and display price of odd lot orders. The proposed change would not alter the price at which an odd lot order would be eligible to trade, but rather, would provide greater transparency regarding what price an odd lot order would trade by aligning the display price of such order with its working price. The Exchange believes that this proposed rule change would further remove impediments to and perfect the mechanism of a free and open market and a national market system by reducing the potential for an odd lot order to appear on the Exchange's proprietary data feeds as though it is locking or crossing the PBBO. The Exchange further believes the proposed rule change, which proposes to assign a display price that is equal to the working price for odd lot orders, would remove impediments to and perfect the mechanism of a fair and orderly market because it would promote transparency in the ranking and execution of such orders. Additionally, the Exchange believes the proposed change to how the working time of an odd lot order would be adjusted would remove impediments to and perfect the mechanism of a free and open market by aligning the processing of odd lot orders with the standard manner by which the working time is assigned to an order, as provided for in Rule 7.36(f)(2).

#### *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 changes to Rules 7.18, 7.31, and 7.34 are designed to provide additional specificity to the Exchange's rules, reduce operational complexity during a UTP Regulatory Halt, and streamline order processing when trading resumes. The proposed changes to Rules 7.16, 7.31, and 7.38 are also designed to provide additional specificity to the Exchange's rules and reduce operational complexity by (i) aligning the display price of an odd lot order with its working price, (ii) converting sell short Market Orders to displayed interest, (iii) clarifying that D Orders and Primary Pegged Orders would not be re-priced to a locked or crossed PBBO, and (iv) promoting transparency in the ranking and execution of odd lot orders. These proposed changes should, therefore, promote competition by enhancing the Exchange's rules to provide greater specificity to market participants and improving the efficiency of the Exchange's order handling processes.

#### *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 Act<sup>23</sup> and Rule 19b-4(f)(6) thereunder.<sup>24</sup> 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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 under Section 19(b)(2)(B)<sup>25</sup> 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-08 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2019-08. 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 (<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 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. All comments received will be posted without change. Persons submitting comments are cautioned that

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2019–08 and should be submitted on or before April 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–04689 Filed 3–13–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–482, OMB Control No. 3235–0540]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available*

*From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

*Extension:*

Rule 17a–25

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17a–25 (17 CFR 204.17a–25) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Paragraph (a)(1) of Rule 17a–25 requires registered broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff. In addition, Paragraph (c) of Rule 17a–25 requires broker-dealers to submit, and keep current, contact person information for electronic blue sheets (“EBS”) requests. The Commission uses the information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

The Commission estimates that it sends approximately 13,493 electronic blue sheet requests per year to clearing broker-dealers that in turn submit an

average 528,551 responses.<sup>1</sup> It is estimated that each broker-dealer that responds electronically will take 8 minutes, and each broker-dealer that responds manually will take 1½ hours to prepare and submit the securities trading data requested by the Commission. The annual aggregate hour burden for electronic and manual response firms is estimated to be 34,577 (253,705 × 8 ÷ 60 = 33,827 hours) + (500 × 1.5 = 750 hours), respectively.<sup>2</sup>

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Office, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 11, 2019.

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–04729 Filed 3–13–19; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>1</sup> A single EBS request has a unique number assigned to each request (e.g., “0900001”). However, the number of broker-dealer responses generated from one EBS request can range from one to several thousand. EBS requests are sent directly to clearing firms, as the clearing firm is the repository for trading data for securities transactions information provided by it and correspondent firms. Clearing brokers respond for themselves and other firms they clear for. There were 528,551 responses during the 25 month period for an average of 21,142 responses per month or an average of 253,705 annual responses.

<sup>2</sup> Few respondents submit manual EBS responses. The small percentage of respondents that submit manual responses do so by hand, via email, spreadsheet, disk, or other electronic media. Thus, the number of manual submissions (approximately 500 per year) has minimal effect on the total annual burden hours.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85272; File No. SR–NYSEAMER–2019–04]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7.16E, 7.18E, 7.31E, 7.34E, 7.35E, and 7.38E

March 8, 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 February 22, 2019, 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, II, and III 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 Rules 7.16E (Short Sales), 7.18E (Halts), 7.31E (Orders and Modifiers), 7.34E (Trading Sessions), 7.35E (Auctions), and 7.38E (Odd and Mixed Lots). 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 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.

<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.

<sup>26</sup> 17 CFR 200.30–3(a)(12).