THEMIS TRADING LLC

April 14, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Proposed Rule Change to Amend Rules 4702(b)(14) and (b)(15) to Shorten the Holding Period Requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book

Dear Ms. Countryman,

Themis Trading appreciates the opportunity to comment on the proposal submitted by Nasdaq to substantially reduce the time of the holding period for midpoint extended life orders (M-ELO). Themis Trading believes that this change would defeat the purpose of the original intent of the order type and would harm, rather than help, long term investors.

For your background, Themis Trading is an institutional agency brokerage, providing investment managers of all sizes with the best possible execution on their equity trade orders. We represent long-term investors who form the backbone of our capital markets system by investing in the growth of public companies and the US economy.

When Nasdaq first introduced their M-ELO order type over two years ago, we were surprised that one of the major stock exchanges finally seemed to be introducing an order type which was designed to help the long term investor. We were optimistic about the MELO order but we thought that Nasdaq was going to have a tough time with M-ELO matches due to the half-second holding period.

Unfortunately, since the original proposal, the M-ELO order type seems to have struggled to gain any traction. For the week ended 2/17/20 , M-ELO orders traded only 20 million shares or an **average of 4 million shares per day.** This lack of volume is in spite of Nasdaq diluting the original M-ELO concept by allowing odd-lots and orders on their continuous book to interact with M-ELO orders.

Nasdaq has now decided to make a major change to M-ELO and has proposed reducing the holding period of a M-ELO order from 1/2 second to 10 milliseconds which would essentially make it unrecognizable to its original concept. In a SEC filing, Nasdaq lamented about their original design:

> “The Exchange believed that the longer length of the M-ELO Holding Period and its simplicity in design would provide greater protection for participants than they could achieve through competing delay mechanisms.”

This echoes what Nasdaq said in their original proposal about the difficulty of getting any real volume done in today's fragmented markets:

> "Orders that access resting liquidity on exchanges have decreased in size due to the fragmented nature of the broader market and the adoption of algorithmic trading."

The point of using a 1/2 second minimum duration life was to discourage high-speed, predatory traders from interacting with long-term investors who were seeking more volume with less market impact. But it appears since M-ELO has been unsuccessful, Nasdaq has had a change of heart about the minimum duration time and now believe:

> “Ultimately, the Exchange determined that it could reduce the Holding Periods to 10 milliseconds **without compromising** the protective power that M-ELO and M-ELO+CB are intended to provide to participants and investors.”

While this change may help Nasdaq increase their volumes, we have a question:

Does this change help long term investors?

In their new proposal, Nasdaq admits that the SEC approved the original M-ELO order type since it was designed for institutional investors who wanted to limit information leakage:

> "When the Commission approved the M-ELO and the M-ELO+CB, it determined that these Order Types are consistent with the Act because they “could create additional and more efficient trading opportunities on the Exchange for investors **with longer investment time horizons**, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.”

But now Nasdaq has changed their tune and wants to give short-term, predatory traders the ability to interact with M-ELO orders. They believe that 10 milliseconds is the Goldilocks zone:

> “The proposal, in other words, will re-calibrate the lengths of the Holding Periods so that M-ELOs and M-ELO+CBs will operate in the **“Goldilocks” zone** – their Holding Periods will not be so short as to render them unable to provide meaningful protections against information leakage and adverse selection, but

> the Holding Periods also will not be too long so as to cause participants and investors to miss out on favorable execution opportunities."

How did Nasdaq decide that 10 milliseconds was the "Goldilocks zone"? What type of analysis did they do to decide that 10 milliseconds was enough time to protect long term investors? It takes approximately 300 milliseconds to blink your eye but Nasdaq believes that 10 milliseconds is enough time for a M-ELO order to rest before it is allowed to interact with other M-ELO orders and orders that are on have been on their continuous book for only 10 milliseconds. We believe that M-ELO orders will lose a significant amount of protection since the pay-to-play minimum time has been dropped by a magnitude of 50x.

If this change is approved by the SEC, we hope that brokers that have M-ELO orders programmed into their routes will notify their clients of the change. We would expect that most long-term investors will decide to no longer use M-ELO orders since they are now much more likely to get pinged by predatory traders and leak information.

We appreciate the opportunity to comment on Nasdaq's proposed M-ELO changes. Please do not hesitate to contact us if you have any questions or wish to discuss our letter.

Sincerely,

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