

April 21, 2020



VIA ELECTRONIC MAIL

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Brett M. Kitt

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Re: The Nasdaq Stock Market LLC; Notice of Filing of 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 (Release No. 34-88320; File No. SR-NASDAQ-2020-11)

Dear Ms. Countryman:

The Nasdaq Stock Market, LLC (“Nasdaq”) writes to respond to a comment letter (the “Letter”) that the Themis Trading LLC (“Themis”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on April 14, 2020¹ regarding Nasdaq’s proposal to shorten from one-half second to 10 milliseconds the Holding Periods that presently apply to Nasdaq’s Midpoint Extended Life Orders (“M-ELOs”) and M-ELOs plus Continuous Book Orders (“M-ELO+CBs”).² In short, Themis’s belated Letter³ makes arguments that are factually incorrect and inconsequential to the question of whether the Proposal is consistent with the Exchange Act and merits the Commission’s approval.

First, Themis asserts incorrectly that by shortening the Holding Periods for M-ELO and M-ELO+CB to 10ms, the Proposal would cause these Order Types to “lose a significant amount of protection” to the detriment of long term investors.⁴ Themis also is wrong that Nasdaq failed to discuss how it arrived at 10ms for the length of the shortened Holding Periods. In fact, the Proposal is explicit in explaining why Nasdaq believes that shortening the Holding Period to 10ms would not materially diminish the protective power of M-ELO and M-ELO+CB:

After examining the historical effects of shorter Holding Periods of between 10 milliseconds and 400 milliseconds, the Exchange determined that a reduction of the M–

¹ See Letter from Mr. S. Arnuk & Mr. J. Saluzzi, Partners and Co-Founders, Themis Trading LLC to Ms. V. Countryman, Secretary, SEC (April 14, 2020).

² See Securities Exchange Act Release No. 34-888320 (March 4, 2020), 85 FR 13962 (March 10, 2020) (SR-NASDAQ-2020-011) (the “Proposal”).

³ Themis submitted its Letter on April 14, 2020. However, the deadline for public comment on the Proposal expired on March 31.

⁴ See Letter at 2.

ELO Holding Period to as short as 10 milliseconds would have caused an average impact on markouts of only 0.10 basis points (across all symbols). In other words, compared to the execution price of an average M–ELO with a one-half second Holding Period, the Exchange found that a M–ELO with a 10 millisecond Holding Period would have had an average post-execution impact that was only a tenth of a basis point per share—a difference in protective effect that is immaterial. Thus, the Exchange determined that shortening the Holding Periods to 10 milliseconds for M–ELOs and M–ELO+CBs would increase the efficacy of the mechanism while not undermining the power of those Order Types to fulfill their underlying purpose of minimizing market impacts. The Exchange notes that, even at a length of 10 milliseconds, the Holding Periods still will be as or more effective than the delay mechanisms that competing exchanges employ, such that the M–ELO and M–ELO+CB would remain among the highest-performing order types available to market participants. At the same time, the Exchange determined that a reduction in the Holding Periods to 10 milliseconds would dramatically add to the circumstances in which M–ELOs and M–ELO+CBs would be useful to participants.⁵

In support of the foregoing the Proposal also cites to an analysis that Nasdaq performed of the effects of shortened Holding Periods on M-ELO performance.⁶ This analysis refutes Themis’s assertions that the Proposal would significantly diminish the protective effects of M-ELO and M-ELO+CB and harm long-term investors.

Even if Themis was correct in asserting that the Proposal would diminish the protective power of M-ELO and M-ELO+CB, this conclusion would have no bearing upon whether the filing is consistent with the Exchange Act. Instead, the Letter amounts to nothing more than misinformed business advice to market participants.

Finally, Nasdaq wishes to correct Themis’s mischaracterizations of the extent to which market participants utilize M-ELOs and M-ELO+CBs. The letter states that “for the week of 2/17/20 M-ELO orders traded only 20 million shares or an average of 4 million shares per day.”⁷ This would be correct if NMS Tier 2 symbols did not count towards a venue or order type’s activity, but in fact they do. In February 2020, the average daily volume of M-ELO and M-ELO+CB was 10.5 million shares. In March, 2020, the average daily volume of these Orders was approximately 11.3 million shares, with an average order size of 470 shares – a figure that was larger than the average order size that month on other platforms that had competing products, such as IEX. Nasdaq believes that these statistics demonstrate that M-ELO and M-ELO+CB are successful Order Types that market participants value and employ. Nasdaq believes that the Proposal will only increase the extent to which participants utilize them going forward.

⁵ See Proposal, *supra*, at 13963.

⁶ See *id.* at 13963 n.6 (citing Nasdaq, “The Midpoint Extended Life Order (M–ELO); M–ELO Holding Period,” dated February 13, 2020, available at <https://www.nasdaq.com/articles/the-midpointextended-life-order-m-elo%3A-m-elo-holdingperiod-2020-02-13>).

⁷ See Letter at 1.

In sum, Nasdaq believes that nothing in the Themis Letter should give the Commission pause about approving the Proposal or doing so in a timely fashion,

Sincerely,

A handwritten signature in black ink that reads "Brett Kitt". The signature is written in a cursive, slightly slanted style.

Brett M. Kitt
Associate Vice President &
Principal Senior Associate General Counsel