

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88743; File No. SR-NASDAQ-2020-011)

April 24, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving 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

I. Introduction

On February 26, 2020, The Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Nasdaq Rules 4702(b)(14) and (b)(15) to shorten the holding period requirements for Midpoint Extended Life Orders (“M-ELOs”) and Midpoint Extended Life Orders Plus Continuous Book (“M-ELO+CBs”). The proposed rule change was published for comment in the Federal Register on March 10, 2020.³ This order approves the proposed rule change.

II. Description of the Proposal

M-ELO is an order type with a non-display order attribute that is priced at the midpoint between the national best bid and national best offer (“NBBO”) and that will not be eligible to execute until a holding period of one-half second (“Holding Period”) has passed after acceptance

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88320 (March 4, 2020), 85 FR 13962 (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-011/srnasdaq2020011.htm>.

of the order by the system.⁴ Once a M-ELO becomes eligible to execute, the order may only execute against other eligible M-ELOs and M-ELO+CBs.⁵

M-ELO+CB is an order type that has all of the characteristics and attributes of a M-ELO, except that after satisfying its Holding Period, in addition to executing against other eligible M-ELO+CBs and M-ELOs, it may also execute against certain orders on the Exchange's continuous book.⁶ Specifically, a M-ELO+CB may execute against non-displayed orders with midpoint pegging and midpoint peg post-only orders (collectively, "Midpoint Orders") resting on the Exchange's continuous book, if: (1) the Midpoint Order has the midpoint trade now order attribute enabled; (2) the Midpoint Order has rested on the continuous book for at least one-half second ("Resting Period") after the NBBO midpoint falls within the limit price set by the participant; (3) no other order is resting on the continuous book that has a more aggressive price than the current NBBO midpoint; and (4) the Midpoint Order satisfies any minimum quantity requirement of the M-ELO+CB.⁷

The Exchange now proposes to shorten the Holding Period for M-ELOs and M-ELO+CBs from one-half second to ten milliseconds.⁸ The Exchange also proposes to shorten the corresponding Resting Period for Midpoint Orders from one-half second to ten milliseconds.⁹ According to the Exchange, after observing M-ELO and M-ELO+CB trading over the past two years and gathering feedback from market participants (in particular, those that trade with a

⁴ See Nasdaq Rule 4702(b)(14).

⁵ See id.

⁶ See Nasdaq Rule 4702(b)(15).

⁷ See id.

⁸ See proposed Nasdaq Rule 4702(b)(14).

⁹ See proposed Nasdaq Rule 4702(b)(15).

longer time horizon and are concerned with market impact), it has determined that the length of the Holding Period should be recalibrated.¹⁰ The Exchange states that reducing the Holding Period to ten milliseconds would not compromise the purpose of the M-ELO and M-ELO+CB order types.¹¹ In particular, the Exchange states that it examined historical M-ELO executions and found that reducing the Holding Period to ten milliseconds would not have a material impact on its protective effect.¹²

The Exchange states that it will continue to conduct real-time surveillance to monitor the use of M-ELOs and M-ELO+CBs to ensure that such usage remains appropriately tied to the intent of the order types.¹³ If, as a result of such surveillance, the Exchange determines that the shortened Holding Period does not serve its intended purpose or adversely impacts market quality, the Exchange would seek to make further recalibrations.¹⁴

¹⁰ See Notice, supra note 3, at 13963. The Exchange also states that participants have informed the Exchange that in certain circumstances, such as when they seek to trade symbols that on average have a lower time-to-execution than one-half second, they are reticent to enter M-ELOs and M-ELO+CBs because the Holding Period is too long and presents countervailing risks (i.e., the Holding Period is longer than necessary and participants risk losing out on favorable execution opportunities that would otherwise be available to them had they placed a non-M-ELO or M-ELO+CB order). See id. In addition, the Exchange states that many institutional routing strategies recalibrate and will route an order based on where trading activity is occurring, and this recalibration could occur before the completion of the Holding Period. See id.

¹¹ See id.

¹² See id.

¹³ See id. at 13964.

¹⁴ See id.

The Exchange intends to make the proposed changes effective in the second quarter of 2020 and will publish a trader alert at least 14 days in advance of making the proposed changes effective.¹⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the rules of a national securities exchange be 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.

In its original order approving M-ELO on the Exchange, the Commission noted its belief that the M-ELO order type 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.¹⁸ In its order approving M-ELO+CB, the Commission

¹⁵ See id.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937, 10938-39 (March 13, 2018) (order approving SR-NASDAQ-2017-074).

noted its belief that, as with M-ELOs, M-ELO+CBs represent a reasonable effort to further enhance the ability of longer-term trading interest to participate effectively on an exchange.¹⁹ A commenter expressed concern that the proposal would defeat the original intent of M-ELOs and that M-ELOs would lose a significant amount of protection as a result of the shortened Holding Period.²⁰ The commenter asked how the Exchange determined to propose the ten-millisecond Holding Period, and expressed its belief that the proposal would result in more information leakage and therefore most long-term investors would decide to no longer use M-ELOs.²¹ In response, the Exchange disagreed that the proposal would cause M-ELOs and M-ELO+CBs to lose a significant amount of protection to the detriment of long-term investors and referenced the discussion in the Notice regarding how the Exchange selected the proposed ten-millisecond Holding Period.²² The Exchange also stated that even if the commenter was correct in asserting that the proposal would diminish the protective power of M-ELOs and M-ELO+CBs, that conclusion should have no bearing on whether the proposal is consistent with the Act.²³

The Commission notes that, with the proposed ten-millisecond Holding Period and Resting Period, M-ELOs and M-ELO+CBs would continue to be optional order types that are

¹⁹ See Securities Exchange Act Release No. 86938 (September 11, 2019), 84 FR 48978, 48980-81 (September 17, 2019) (order approving SR-NASDAQ-2019-048).

²⁰ See letter from Sal Arnuk and Joseph Saluzzi, Partners and Co-Founders, Themis Trading LLC, to Vanessa Countryman, Secretary, Commission, dated April 14, 2020 (“Themis Letter”).

²¹ See *id.* at 3. The commenter further believes that, if the proposal is approved by the Commission, brokers that utilize M-ELOs should notify their clients of the change. See *id.*

²² See letter from Brett M. Kitt, Associate Vice President and Principal Senior Associate General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated April 21, 2020 (“Nasdaq Response Letter”). See also Notice, *supra* note 3, at 13963.

²³ See Nasdaq Response Letter, *supra* note 22, at 2. The Exchange also sought to correct certain M-ELO trading volume statistics included in the Themis Letter. See *id.*

available to investors with longer investment time horizons, including institutional investors. The Commission also believes that the proposal could make M-ELOs and M-ELO+CBs more attractive for securities that on average have a time-to-execution of less than one-half second and, for investors who currently do not use M-ELOs and M-ELO+CBs for these securities, provide optional order types that could enhance their ability to participate effectively on the Exchange. The Commission notes that, if market participants determine that the proposal would make M-ELOs and M-ELO+CBs less attractive for their particular investment objectives, such market participants may elect to reduce or eliminate their use of these optional order types. Moreover, as noted above, the Exchange will continue to conduct real-time surveillance to monitor the use of M-ELOs and M-ELO+CBs to ensure that such usage remains appropriately tied to the intent of the order types.²⁴ If, as a result of such surveillance, the Exchange determines that the shortened Holding Period does not serve its intended purpose or adversely impacts market quality, the Exchange would seek to make further recalibrations.²⁵

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

²⁴ See supra note 13 and accompanying text.

²⁵ See supra note 14 and accompanying text.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2020-011) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).