



December 22, 2016

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street N.E.  
Washington, D.C. 20549-1090

**RE: Securities Exchange Act Release No. 79428 (November 30, 2016); SR-Nasdaq-2016-161**

Dear Mr. Fields:

Bats Global Markets, Inc. (“Bats”) appreciates the opportunity to comment on the above-referenced proposed rule change in which the Nasdaq Stock Market LLC (“Nasdaq”) proposes to adopt a new Extended Life Priority Order Attribute.<sup>1</sup> In sum, Nasdaq’s proposed Extended Life Priority Order Attribute would allow a displayed order that commits to a one second or longer resting period to receive higher priority than other displayed orders on the Nasdaq book. The Nasdaq member that enters the order commits to not altering or cancelling that order during the one second period. However, the order may be executed during that one second period while still receiving enhanced priority. Nasdaq proposes to first provide the Extended Life Priority Order Attribute only to displayed Designated Retail Orders.<sup>2</sup> Bats strongly supports exchange innovation and providing additional choices for retail orders. However, Bats believes that Nasdaq does not propose strong enough penalties or controls to deter abuse on a real-time basis, particularly if Nasdaq’s intent is to ultimately extend the availability of the proposed attribute beyond Designated Retail Orders.

The sole criterion for Designated Retail Orders to utilize the Extended Life Priority Order Attribute is to commit to a full second of non-cancellation or alteration for at least 99% of their orders during a three month period. Nasdaq stated that it will monitor a member’s use of the Extended Life Priority Order Attribute on a quarter-by-quarter basis to determine whether the member satisfies the necessary eligibility requirements. Nasdaq’s filing also sets forth penalties for members who fail to comply with those eligibility requirements by preventing violators from utilizing Extended Life Priority Order Attribute for a certain period of time. However, Nasdaq failed to discuss what steps it would take intra-quarter to detect and prevent abuse or how it would further penalize members who inappropriately benefited from enhanced priority to the detriment of other orders during that quarter. Bats is concerned that market participants could utilize the Extended Life Priority Order Attribute in an inappropriate manner, such as obtaining a priority advantage where it is not warranted. Concerns with Nasdaq’s three month lag in

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<sup>1</sup> See Securities Exchange Act Release No. 79428 (November 30, 2016), 81 FR 87628 (December 5, 2016) (SR-Nasdaq-2016-161).

<sup>2</sup> See Nasdaq Rule 7018 for a description of Designated Retail Orders.

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determining whether there has been abuse is heightened should Nasdaq expand the availability of the Extended Life Priority Order Attribute to other types of investors. In such case, firms that routinely cancel orders in less than a second could use the Extended Life Priority Order Attribute during the quarter, profiting from the benefits that accrue from a better order queue position, only to be penalized at the end of the quarter by being unable to use the Extended Life Priority Order Attribute prospectively for a set period of time. Therefore, Bats believes that Nasdaq should set forth how it would seek to prevent such abuse intra-quarter. Nasdaq should also set forth how it may further penalize Members who fail to satisfy the eligibility requirements, considering the potential benefits that the member received from enhanced priority during the quarter in question. In other words, Nasdaq's proposal doesn't have strong enough penalties to deter abuse.

Bats appreciates the opportunity to comment on the above proposed rule change and urges Nasdaq to amend its filing to address the above issues. Please feel free to contact me if you have any questions related this matter.

Sincerely,



Eric Swanson  
EVP, General Counsel and Secretary