

HUDSON RIVER TRADING LLC

December 22, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Nasdaq Extended Life Priority Order
(Release No. 34-79428; File No. SR-NASDAQ-2016-161)

Dear Mr. Fields:

Hudson River Trading LLC (“Hudson River Trading”) appreciates the opportunity to comment on the proposed Nasdaq Extended Life Priority Order (“ELO”). Hudson River Trading is a global, multi-asset class quantitative trading firm that develops automated trading strategies that provide liquidity and facilitate price discovery on exchanges and alternative trading systems.

The U.S. equities markets are the most liquid and efficient in the world. In order to ensure that U.S. markets continue to serve investors and listed companies well, Hudson River Trading believes it is critical that the Securities and Exchange Commission (“Commission”) ensures fair, orderly and efficient markets. Several recent exchange proposals aim at creating greater discrimination and segmentation of order flow on exchanges. The IEX exchange application raised the issues of creating a speed advantage for users of non-displayed, pegged orders and for users of orders routed by the IEX exchange affiliated broker-dealer.¹ Ultimately, the speed advantage was approved for users of non-displayed, pegged orders.² IEX modified their proposal to remove the speed advantage for users of their routable orders.³ CHX recently proposed to segment its market to provide a speed advantage to firms focused on providing liquidity on CHX relative to other CHX users.⁴ Similar to these proposals, the ELO proposal discriminates against certain users as it seeks approval of an order type that provides a matching priority advantage for users willing to generally not cancel such orders in less than one second. Further, Nasdaq proposes to limit access to this order type to a particular segment of market participants.

¹ See Release No. 34-75925; File No. 10-222

² See Release No. 34-77406; File No. 10-222

³ See Investors’ Exchange LLC – Amendment No. 3 to Form 1 Application for Registration as a National Securities Exchange Pursuant to Section 6 of the Securities Exchange Act of 1934

⁴ See Release No. 34-78860; SR-CHX-2016-16

Limiting Access to Exchange Features to Certain Market Participants

Hudson River Trading raised concerns with the IEX exchange proposal relating to the precedent-setting nature of proposals aimed to provide advantages to users of certain exchange features which were described as aimed at “long-term investors.”⁵ CHX has pointed to the precedent set in the IEX approval as rationale for approval of features designed to provide an advantage to high frequency market making firms.⁶ In both the IEX and CHX cases, the features involved, while targeted at certain users, are available to all members.

As proposed, ELO will be available only to retail investors. As use of the order is limited to only retail investors, it raises the issues of fair access to exchange services and of unfair discrimination. Exchanges are prohibited from unfair discrimination and are required to provide fair access to exchange services by the Exchange Act. Hudson River Trading supports encouraging retail investor participation in the market, but believes it is important to ensure that the precedent set by such policies remains sound when applied to other potential applications. For example, while many firms will be sympathetic to order types that are limited to retail investors, the precedent opens the door for introduction of order types available only to large banks or proprietary trading firms.

The best way to protect against unfair discrimination is to ensure that exchanges provide impartial access to all exchange functionalities. While it is inevitable that some market participants will find some features or order types more valuable than others based on their trading objectives, all features should be available to all members. The Commission should be mindful of artificial limitations being placed on the use of order types, market data feeds or means of access. Allowing exchanges to create advantages for different order types and user types will create a burden on fair competition, raise fair access concerns and increase market complexity.

Issues Raised by ELOs

Specifically, we believe that ELOs raise more narrow issues relating to appropriate matching logic on exchanges. Price/display/time priority is not the only appropriate matching logic for exchanges. In fact, Nasdaq PSX operates a “Price Setter Pro Rata” model and NYSE operates a “parity” model. However, it is critical that exchange matching logic is impartial and that biased or arbitrary matching logic are avoided.

Nasdaq seeks to provide priority for ELO orders because the firms sending them ensure that 99% of ELO orders are not canceled within one second. Nasdaq does not provide any rationale for why orders that generally cannot be canceled within one second should gain priority over orders that might already have been outstanding for more than 1 second.⁷ In fact, ELO orders would

⁵ See Letters to Brent J. Fields, Secretary, SEC, from Adam Nunes, Head of Business Development, Hudson River Trading LLC (December 4, 2015 and January 7, 2016).

⁶ *Supra* note 4.

⁷ ELO orders cannot be canceled for one second whereas a non-ELO order could have been canceled during its first second, but was not. For the first one second after the ELO order is submitted, the orders have different attributes and one could try to justify that as a rationale for different priority. However, after the one second, either order can be canceled at any time. At that point, a new ELO would be prioritized after the existing ELO even though the existing ELO

gain priority over orders that might have been outstanding for minutes or hours. Orders that cannot, or generally will not, be canceled within a certain timeframe should not gain priority over orders that have already been outstanding for longer than the minimum resting time. Providing priority to such orders will discourage other market participants from displaying liquidity as those market participants to which the ELO order is available can jump them in the queue at a later point in time.

Conclusion

Nasdaq's ELO proposal raises novel issues related to discrimination among members. The best way to protect against unfair discrimination is to ensure that exchanges provide impartial access to all exchange features including market data, means of access and order types. It is important that exchange matching logic is impartial and avoids arbitrary and unjustifiable matching priority. With respect to specific features of ELO orders, ELO orders should not gain priority over orders that have already fulfilled the minimum cancel time of ELO orders.

Please do not hesitate to contact me if you have any questions or would like to discuss this letter.

Sincerely,

/s/ Adam Nunes

Adam Nunes
Head of Business Development

can be canceled at any time, which is contrary to the rationale for rewarding ELO orders with priority. It would reason that the new ELO order would have priority over the existing ELO since the new ELO cannot be canceled whereas the existing ELO can be canceled. This would result in ELO priority always being given to the newest ELO. Alternatively, ELO priority could be ephemeral and ELOs could have priority during the one second during which it could not be canceled, but after such time, the ELO would have priority in line with any other order that can be canceled at any time.