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February 17, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 (SR-NASDAQ-2016-161)

Dear Mr. Fields:

The NASDAQ Stock Market LLC filed the above-referenced filing on February 17, 2017.

Sincerely,

A handwritten signature in black ink, consisting of a large, fluid loop followed by a long horizontal stroke extending to the right.

T. Sean Bennett
Principal Associate General Counsel

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 71 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2016 - * 161
 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *) 1

Filing by NASDAQ Stock Market
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sean Last Name * Bennett
 Title * Principal Associate General Counsel
 E-mail * [REDACTED]
 Telephone * [REDACTED] Fax [REDACTED]

Signature


Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 02/17/2017 Executive Vice President and General Counsel
 By Edward S. Knight [REDACTED]
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt a new Extended Life Priority Order Attribute under Rule 4703, and to make related changes to Rules 4702, 4752, 4753, 4754, and 4757.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. An amended Designated Retail Order Attestation form is attached as Exhibit 3. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on November 5, 2016. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.



¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is proposing a new Extended Life Priority Order Attribute, which will allow Displayed Orders that are committed to a one-second or longer resting period to receive higher priority than other Displayed Orders of the same price on the Nasdaq Book. From its inception, Nasdaq has been an innovator and change agent in the financial markets. Innovation is in Nasdaq's DNA, beginning with the development of electronic trading and continuing today as we seek to bring new ideas to the financial markets, such as streamlined proxy voting using blockchain technology,³ strengthening investor protection through Limit Order Protection,⁴ and enhancing investor confidence in the Opening Cross.⁵ Nasdaq has not shied away from experimenting with new market structure in an effort to further refine our markets.⁶ The change proposed herein is another step forward in a long line of innovations Nasdaq has brought to the U.S. financial markets.

³ See <http://ir.nasdaq.com/releasedetail.cfm?releaseid=954654>; see also <http://www.pcworld.com/article/3033075/nasdaq-to-use-blockchain-to-record-shareholder-votes.html>.

⁴ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-NASDAQ-2016-067).

⁵ See Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR-NASDAQ-2015-159).

⁶ For example, in February 2015 Nasdaq implemented an access fee pilot to determine the effect of reduced access fees on market quality. See Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015) (SR-NASDAQ-2014-128).

Background

As the markets became more automated in the 1990s and 2000s, and in particular since the implementation of the Regulation NMS Order Protection Rule (Rule 611) and the Access Rule (Rule 610) beginning in 2006,⁷ exchanges have generally based their execution algorithms on a price/display/time priority. Under this priority structure, the first displayed order at a price has priority over the next order and so on (this is also sometimes referred to as “First In First Out” or “FIFO”). All displayed orders have priority over non-displayed orders at a price level. The price/display/time priority structure has brought with it many benefits:

- Competition has increased
- Bid/Offer spreads have decreased
- Trading costs have decreased
- Access to the markets has been democratized

Nonetheless, the price/display/time priority system may not serve the interests of all market participants. In particular, the price/display/time priority system provides incentives to set new prices and optimize trading strategies based on the time priority in an order book. Increasing competition in the price/time priority structure has led to market velocity and displayed order duration becoming widely discussed and debated topics in recent years. Over time, as order placement competition on Nasdaq has grown, the importance of an order’s ranking in the order queue has increased. In addition, 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 and routing

⁷ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006); see also Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

strategies. As a result, when these smaller orders come to an exchange to access liquidity in the most liquid securities, there are orders deep in the queue that may not always have the opportunity to participate.

As an innovator, Nasdaq develops new functionality to promote the evolution of the markets. Nasdaq believes that it is imperative to address the needs of various market participants in new ways. Specifically, Nasdaq is proposing to supplement the ubiquitous price/display/time priority structure in the U.S. Equities markets to address the needs of market participants that focus their passive trading strategies on their ability to assume market risk by resting orders for an extended duration. Nasdaq believes that many of these participants have a longer investment horizon (i.e., long term investors) and therefore are not necessarily monitoring minute changes in the best bid and offer over very short time periods and simply want opportunities to participate passively at the prevailing market when transactions occur. Nasdaq has consulted a wide swath of its market participants, including buy-side institutions, market makers, investment banks, and retail broker-dealers. In addition, Nasdaq has consulted with corporate issuers that list their securities on Nasdaq. Nasdaq has weighed various ideas on how to expand interaction on Nasdaq's order book to more participants (e.g., long term investors) and believes that it is better to provide incentives to reduce the potential for order adjustment and cancellation, rather than apply artificial latency mechanisms that may distort or have unintended consequences on market quality. Specifically, Nasdaq is proposing to provide an incentive to market participants that enter orders that are required to remain unaltered on the Nasdaq Book for a minimum time.

Proposal

Nasdaq is proposing to offer a new Order Attribute⁸ available during System Hours⁹ that will allow certain Displayed Orders¹⁰ to have priority ahead of other resting Displayed Orders on the Nasdaq Book at the same price. To receive this priority, an Order must be designated with the Order Attribute “Extended Life Priority” (“ELO”) to indicate that the Order will not be altered or canceled by the member before the minimum resting time has elapsed.

Currently, Nasdaq’s System¹¹ places a time-stamp on each Order entered by a member, which determines the time ranking of the Order for purposes of processing the

⁸ The term “Order” means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. See Rule 4701(e). An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. Id. An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. Id. The Exchange describes the Order Types available on Nasdaq under Rule 4702 and describes the Order Attributes available on Nasdaq under Rule 4703.

⁹ The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). See Rule 4701(g).

¹⁰ Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as “Non-Displayed Orders.” An Order with a Display Order Attribute may be referred to as a “Displayed Order.” See Rule 4703(k).

¹¹ As defined by Rule 4701(a).

Order.¹² The System presents resting Orders on the Nasdaq Book for execution against incoming Orders in accordance with a price/display/time algorithm.¹³ Price means that better priced Orders will be presented for execution first. For example, an Order to buy at \$10.00 would be ranked before an Order to buy at \$9.99. Display and Time mean that equally priced Orders with a Display Attribute will be ranked in time priority. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, are ranked in time priority behind all Displayed Orders.¹⁴ Processing Orders in this manner rewards market participants that take market risk by quickly and efficiently submitting Displayed Orders to the System to drive price formation on the Nasdaq Book. Price/display/time processing benefits the market by driving competition in Order flow, resulting in tighter bid/offer spreads and reducing overall costs to buy and sell securities. While this drive to reward setting new price levels (i.e., being first at a given price) has led to highly efficient markets with significant volume on Nasdaq being attributed to firms that provide two-sided liquidity, pure price/display/time processing may limit certain customer segments from effectively participating, particularly in highly-liquid securities where the sequence of the arrival of Orders is important to participation in the ensuing transactions on the Nasdaq Book.

The Exchange has observed that many of the market participants that have not focused on efficient Order queue placement of Displayed Order entry often represent

¹² See Rule 4756(a)(2).

¹³ See Rule 4757. The Exchange is proposing to amend Rule 4757 to reflect the proposed exception to the price/display/time algorithm, as discussed below.

¹⁴ Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757. See Rule 4756(c)(3)(C).

retail customer and institutional Order flow, which tend to have longer investment time horizons. Nasdaq believes that promoting Displayed Orders with longer time horizons will enhance the market so that it works for a wider array of market participants, and will benefit publicly traded companies by promoting long-term investment in corporate securities, whether listed on Nasdaq or other exchanges. To further this goal, the Exchange is proposing an exception to the general priority rules¹⁵ to allow Displayed Orders with an Extended Life Priority Attribute to earn queue priority on the Nasdaq Book at any given price level ahead of all other Displayed Orders without the Extended Life Priority Attribute. As discussed below, when there are multiple Orders with Extended Life Priority resting on the Nasdaq Book at the same price they would be ranked by time, therefore making the priority price/display/ELO/time.

Another component to consider with regards to the optimal priority structure is the risk associated with submitting a Displayed Order into the market. There are various elements of risk that are considered when a market participant chooses a price and a time at which to post a Displayed Order on the Nasdaq Book. As noted earlier, price/display/time priority does not necessarily reward or recognize the various types of risks associated with an Order. Nasdaq believes that rewarding market participants that enter Displayed Orders and commit to a longer resting time on the Nasdaq Book, would enable it to broaden the types of behavior and incentives provided, in particular in securities in which the depth of the Nasdaq Book may inhibit these Orders from being placed on Nasdaq. As noted above, these market participants are typically considered long term investors, representing retail and institutional order flow.

¹⁵ Supra note 13.

In its initial implementation, Nasdaq plans to support the Extended Life Priority Attribute for Designated Retail Orders.¹⁶ While the Extended Life Priority Attribute may ultimately prove to benefit a broader set of participants, Nasdaq recognizes that any change of this magnitude can be disruptive to its membership and, consequently, it is prudent to implement this concept in a phased and measured manner. Generally, retail investors are longer term investors who measure stock performance over hours, days, months, etc. rather than seconds or milliseconds. Nasdaq recognizes that there are other market participants that are also long term investors in the market, such as institutional investors. To ensure that these market participants' needs are addressed, Nasdaq anticipates that it will extend the program in a second phase to all Orders that meet the requirements of the Extended Life Priority Attribute after its successful implementation with Designated Retail Orders.¹⁷ The second phase is likely to operate differently from

¹⁶ A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. See Rule 7018. The proposed change will not affect how Orders entered by sponsored access are treated for purposes of determining whether they are Designated Retail Orders.

¹⁷ Any such change, which would be made through a separate filing with the Commission to amend the program, will likely require certain significant changes

the retail phase as the participant types that will be eligible to use ELO could be more broad and diverse than the narrow focus of this first retail-oriented phase. Furthermore, for the avoidance of doubt, any such subsequent phase that broadens the participants that are eligible to use ELO will be proposed in a distinct rule filing by the Exchange.

During the initial retail phase, which is what is being proposed in this rule filing, to be eligible to use the Extended Life Priority Attribute, a member¹⁸ must complete an attestation provided by Nasdaq, stating that the Designated Retail Orders it assigns an Extended Life Priority Attribute will meet the minimum performance standards required by Nasdaq. Nasdaq will determine from time to time what the appropriate parameters are with regards to how firms may qualify for the Extended Life Attribute on Designated Retail Orders, with any changes made through rulemaking with the Commission. Initially, Nasdaq will require that at least 99% of Designated Retail Orders with the Extended Life Priority Attribute exist unaltered on the Nasdaq Book for a minimum of one second.¹⁹ For purposes of calculating the percentage of Orders with ELO that live

to the operation of the ELO Attribute to account for the different participants eligible to use the Attribute.

¹⁸ Initial and continued compliance with the ELO eligibility requirements is calculated by member, as the term is defined by Rule 0120(i).

¹⁹ Nasdaq notes that any change to an Order that would currently result in an Order losing priority (i.e., a change in the Order's time stamp) would also result in an Order with ELO to be considered altered, and thus stopping or restarting the clock in terms of determining whether the Order lived for one second or not. See Rule 4756(a). Thus, any type of update that creates a new timestamp for priority would count as a modification of the order. For example, each time an order is updated due to pegging, repricing, or reserve replenishment, the timer is restarted. Full cancellations would also stop the timer with regards to determining the life of an order. Executions, including partial executions, would not be counted as modifications. Similarly, reductions to the size of a Designated Retail Order with ELO prior to one second elapsing would not be considered to be altered with respect to determining whether the Order lived for one second or not.

for one second or longer, for unexecuted Orders the Exchange measures the number of ELO Orders that lived for one second or longer and divides that value by the number of Orders that were marked as ELO for a given member. For example, if a firm marked 100 of their Designated Retail Orders as ELO and one Order rested on the book for less than one second and the other 99 Orders rested on the book for one second or more, 99% of the member's Orders have met the minimum one-second time frame and the member would be in compliance with the program. Similarly, if the member submitted 100 Designated Retail Orders as ELO and 89 Orders rested on the book unaltered for at least one second and 11 Orders rested on the book unaltered for less than one second, 89% of the member's Orders would have met the one-second requirement and the member would be out of compliance with the ELO eligibility requirements. The Exchange selected one second based on its analysis of the nature of the markets and what it views as a meaningful length of time during which a market participant would take on significant risk balanced against what it believes is the minimum time an Order on the Exchange should exist to improve the quality of the market. The Exchange selected the 99% requirement based on its belief that, while requiring near perfection in terms of compliance, it would allow for flexibility when a member that is following the spirit and intent of the ELO Attribute encounters unforeseen technical issues or other issues that result in de minimis non-compliance. The Exchange will monitor the effectiveness of both requirements and adjust them as needed.²⁰

The one second timeframe would begin at the point the Order is entered into the Nasdaq Book and would conclude once the Order is removed from the Nasdaq Book or

²⁰ Any change to the requirements would be proposed through the rulemaking process.

modified by the participant or the System.²¹ An execution of an Order with the Extended Life Attribute in less than one second due to a full or partial execution of the Order would not count as a modification or cancellation of the Order.²² Orders with certain attributes are designed to be modified by the system under certain circumstances. For example, an Order with a Primary or Market Pegging Attribute²³ is repriced to maintain a relationship to the NBBO. Currently, any time an Order with a Primary or Market Pegging Attribute is repriced by the System, the Order receives a new time stamp which will determine its time priority anew on the Nasdaq Book. An Order with the Extended Life Attribute and a Primary or Market Pegging Attribute would receive a new timestamp for priority on the Nasdaq Book upon repricing, and would be ranked with ELO priority with other ELO Orders at the price level in time priority based on the new timestamp. For example, if the Inside Offer is \$11.06 at the time a Designated Retail Order to sell with the Primary Pegging and ELO Attributes is entered into the System, the Order would be priced at \$11.06 and ranked in time priority among other Orders with the ELO Attribute at that price. If the Inside Offer then moves to \$11.07, the Order would have its price adjusted to \$11.07, consistent with the Primary Pegging Attribute, receive a new time stamp, and

²¹ Thus, the one second requirement would not begin for an Order designated with ELO priority which is routed upon receipt, until that Order returned to Nasdaq and is posted on the Nasdaq Book.

²² A sub-second partial execution of an ELO Order is effectively in compliance with the ELO eligibility requirement of one second.

²³ Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if Nasdaq is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging will be set with reference to the highest bid or lowest offer disseminated by a market center other than Nasdaq. See Rule 4703(d). ELO is available for Orders with Primary and Market Pegging Attributes, but not Orders with Midpoint Pegging as discussed below.

be entered as a new Order with the ELO Attribute ranked in time priority with other ELO Orders at that price. Each time an ELO with a Primary or Market Pegging Attribute has its price updated, it is considered a new order for the purposes of determining its lifetime with respect to the ELO eligibility. Essentially, each price update is considered a separate Order for determining compliance with the program.

Nasdaq will require any member that enters Designated Retail Order with an Extended Life Priority Attribute to attest that it will comply with the minimum performance standards required by Nasdaq under the proposed new Rule 4703(m) to be eligible to enter Designated Retail Orders with an Extended Life Priority Attribute.

For purposes of inclusion in the program, Nasdaq will carefully monitor members' use of the Extended Life Priority Attribute on a monthly basis and will not rely solely on a member's attestation with regard to Extended Life Priority usage. Nasdaq will determine whether a member was in compliance with the eligibility requirements for a given month within five business days of the end of that month. Any member that has not met the requirements in a month will be ineligible to receive Extended Life Priority treatment for its Orders in the month immediately following the month in which it did not comply.²⁴ Following the end of the ineligible month, a member may once again participate in the program if it completes a new attestation for the following month. If a member fails to meet the eligibility standards a second time, its Orders will not be eligible for Extended Life Priority for the two months immediately following the month in which it did not meet the eligibility requirements for the second time. If a member

²⁴ The System will prevent a member that is not eligible to participate in the program from entering Orders that are flagged with Extended Life Priority (including such designation on the port level).

fails to meet the eligibility standards for a third time, it is no longer eligible to receive Extended Life Priority for its Orders.

Concurrently with the initial launch of the Extended Life Priority Attribute, the Exchange will implement new surveillances to identify any potential misuse of the proposed Order Attribute. Members are held to the highest standards on Nasdaq and any attempted manipulation or misrepresentation of the nature of an Order with Extended Life Priority (e.g., a non-retail Order as a Designated Retail Order) would be a violation of Nasdaq's rules. For example, Rule 2110A requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. Rule 2120 prohibits a member from effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. Like the current surveillances Nasdaq conducts to detect violation of securities laws and Nasdaq's rules, the new surveillances would identify potential violative conduct that would be investigated by Nasdaq and FINRA. If the conduct is found to be violative, the member(s) that participated in the violative conduct would be subject to disciplinary action.²⁵

To implement the retail phase of the Extended Life Priority Attribute, Nasdaq is developing a unique identifier that will be appended to each Order entered by the member. Orders with the Extended Life Priority Attribute may be individually designated with the new identifier or entered through an Order port that has been set to designate, by default, all Orders with the new identifier. Orders marked with the new identifier -- whether on an Order-by-Order basis or via a designated port -- will be

²⁵ See Nasdaq Rule 9000 Series.

disseminated via Nasdaq's TotalView ITCH data feed.²⁶ Thus, market participants will be able to identify Designated Retail Orders that have the Extended Life Priority Attribute.²⁷ TotalView ITCH is an order book feed which allows a market participant to recreate the Nasdaq Book order-by-order. Because Orders with ELO have priority over all non-ELO Orders at a given price level, notwithstanding that the non-ELO order(s) were entered first in time, it is important to be able to identify Designated Retail Orders that have the Extended Life Priority Attribute on TotalView ITCH in order to properly recreate the Nasdaq Book.²⁸ The Exchange notes that it is not disseminating the identifier via the SIP because there is no concept of price/time priority in the data provided by the SIP. Furthermore, the SIP does not serve as an order book data feed and thus a participant would not use the SIP to recreate the Nasdaq Book. Therefore, an ELO identifier would not be needed or helpful on the SIP data feed. It is also worth noting that

²⁶ See <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> for a description of TotalView ITCH.

²⁷ Nasdaq notes that this is similar to how BATSZ and BATS EDGX identify retail orders pursuant to BZX Rule 11.25(e) and EDGX Rule 11.21, and as described in the PITCH data feed specifications under "ParticipantID." See US Equities/Options Multicast Depth of Book (PITCH) Specification at p. 22 (available at http://cdn.batstrading.com/resources/membership/BATS_US_EQUITIES_OPTIONS_MULTICAST_PITCH_SPECIFICATION.pdf).

²⁸ In certain circumstances, such identification could raise concern because it may lead to "information leakage." Information leakage is often associated with market participants that are building or unwinding significant trading positions that may have market impact or a trading strategy that is proprietary and therefore confidential. For example, a large buyer might break one large buy order into several smaller orders to allow the market to absorb the demand in small chunks. Retail investor orders generally are not part of a broader multi-order trading strategy. Retail investor interest is most often represented with one order at a single price and, as such, information leakage is not a concern.

the Nasdaq TotalView ITCH feed is broadly available as it is consumed by thousands of market participants.

As noted above, if an Order with Extended Life Priority is not marketable upon entry, the Order will post and display at its limit price, and will be ranked under the price/display/ELO/time priority structure. In other words, an Order with the Extended Life Priority Attribute will be ranked ahead of other Displayed Orders that do not have the Extended Life Priority Attribute and behind any other Displayed Orders with Extended Life Priority that were received previously. For example, if five members attest to enter Orders designated with the Extended Life Priority Attribute and each member enters a Displayed Order so designated at the same price, the Order entered first will receive the highest priority among the five, the second Order will be ranked second, and so on; all Displayed Orders entered at the same price and not designated with the Extended Life Priority Attribute will be ranked behind the five Orders designated with the Extended Life Priority Attribute.

There are three instances in which an Order entered with the Extended Life Priority Attribute will not gain ELO priority. First, an Order with the Extended Life Priority Attribute will only have Extended Life Priority ranking at its displayed price. If an Order with the Extended Life Priority Attribute is ranked at a Non-Displayed price, it will be ranked without Extended Life Priority among Non-Displayed Orders. For example, if a Price to Comply Order²⁹ with an Extended Life Priority Attribute to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be displayed at \$10.99, but ranked at a non-displayed price of \$11 without Extended Life Priority. If the

²⁹ See Rule 4702(b)(1).

Best Offer changes to \$11.01, the Price to Comply Order would be ranked and displayed at \$11 with Extended Life Priority.

Second, a Designated Retail Order with a Non-Display Attribute that is also entered with Extended Life Priority will be added to the Nasdaq Book as a Non-Display Order without Extended Life Priority, following price/display/time processing among resting Orders without Extended Life Priority. For example, neither an Order with Minimum Quantity³⁰ or Midpoint Pegging³¹ Attributes may receive Extended Life Priority as both Attributes may only be Non-Displayed. In certain cases, an Order may have an Attribute with a mix of Display and Non-Display size. Specifically, an Order with both an Extended Life Priority and a Reserve Size³² Attribute would have both a Displayed and Non-Displayed component. The Displayed portion of the Order would be eligible to receive Extended Life Priority while the Non-Display portion would not. Should the Displayed portion of the Order receive a full execution, the Reserve Size Attribute would cause the Order to replenish the Displayed quantity with the Non-Displayed reserve. The newly-replenished portion of the Order would receive a new time

³⁰ Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. An Order with Minimum Quantity is always posted to the Nasdaq Book as Non-Display. See Rule 4703(e).

³¹ Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer, and is always posted as Non-Display. See Rule 4703(d). The Exchange notes that Extended Life Priority is available for other types of Pegged Orders, but is not available for the Market Maker Peg Order. The Market Maker Peg Order is entered to satisfy a market maker's obligations and therefore by definition does not qualify as a Designated Retail Order.

³² See Rule 4703(h).

stamp and receive Extended Life Priority based on that time stamp.³³ For example, if an Order to buy at \$11.05 with Reserve Size and ELO Attributes is posted with a Displayed Size of 200 shares, along with a Non-Displayed reserve portion of 3,000, the 200 shares would be ranked with other Orders with ELO priority at that price in time priority. If the 200 Displayed shares were then executed, 200 shares would be replenished from reserve and post as a new Order with ELO priority with a new timestamp, ranked in time priority with other Orders with ELO priority, and the Non-Displayed Order would be decremented to 2,800 shares. For the purposes of calculating the lifetime of the ELO, each display portion would be counted as separate Orders. Therefore, in the above example, the first 200 shares that were executed would not impact the Order lifetime calculation because executions are not considered cancels or modifications of Orders. However, if after the 200 shares were replenished, the Order were to be cancelled, the time the replenished displayed portion of the Order remained on the book before cancellation would determine the life of the Order for purposes of the ELO Attribute. For example, if the displayed ELO replenished from reserve were to be cancelled after 500 milliseconds, the Order would not be considered to have rested on the book for the one-second requirement under the proposal.

Third, while cross-specific Orders marked with Extended Life Priority will be eligible to participate in the Nasdaq Opening,³⁴ Closing³⁵ and Halt³⁶ Crosses, they will be

³³ As stated previously, the replenished portion of the reserve order would receive a new time stamp and a new timer would start for determining compliance with the ELO minimum resting time of one second.

³⁴ See Rule 4752.

³⁵ See Rule 4754.

ranked without Extended Life Priority.³⁷ Orders with the Extended Life Priority Attribute that are ranked on the Nasdaq Book (i.e., orders that are in the continuous market) will retain Extended Life Priority if they are part of the Cross execution. For example, if a Displayed Order and a Limit On Open Order are entered prior to the Nasdaq Opening Cross, both with Extended Life Priority, the Displayed Order would receive Extended Life Priority on the continuous Nasdaq Book but the Limit On Open Order, which is designated to participate first in the Nasdaq Opening Cross, would not receive Extended Life Priority. Both Orders would be eligible to participate in the Nasdaq Opening Cross, however, the Displayed Order would benefit from its preexisting Extended Life Priority when the Opening Cross is held, while the Limit On Open Order would be ranked with other such Orders in price time priority. Upon completion of the Opening Cross, if both Orders are not fully executed the Displayed Order would remain ranked on the Nasdaq Book with Extended Life Priority, based on its original timestamp, and the Limit On Open Order would join the continuous Nasdaq Book with Extended Life Priority based on the time at which it joins.

Implementation

As mentioned previously, the Exchange plans to implement ELO for Designated Retail Orders in a measured manner. The Exchange anticipates a rollout beginning with a small set of symbols and gradually expanding further. The Exchange will publish the symbols that are eligible for ELO on its website. Any orders submitted with ELO in symbols not eligible for ELO will be accepted as non-ELO Orders for those symbols.

³⁶ See Rule 4753.

³⁷ These are Orders that are designated to participate in the Opening or Closing Cross, and are not available for execution in continuous trading.

The exact date of implementation will be reliant on several factors such as the results of the extensive testing program that Nasdaq employs, and industry events and initiatives. For example, the Exchange generally avoids rolling out new software at or around the day of the annual Russell Index Reconstitution. As such, the Exchange currently plans to implement the initial set of symbols for ELO in the third quarter of 2017. Nasdaq will notify market participants via an Equity Trader Alert once a specific date for the initial rollout is determined.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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. Nasdaq believes that the proposed change is consistent with this provision of the Act because it is an attempt to improve the quality of the market by rewarding market participants for longer-life Order flow. Importantly, Nasdaq is not applying any programmatic or intentional delay to incoming Orders that are attempting to access the market. Instead, Nasdaq's proposal seeks to provide an incentive to market participants to improve the market on Nasdaq by recognizing the value of certain behaviors. Nasdaq currently provides incentives in the form of reduced fees and rebates in return for market-improving behavior. For example, Nasdaq's NBBO Program provides pricing incentives

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(5).

for participants that, among other things, establish the NBBO.⁴⁰ With Extended Life Priority, Nasdaq is providing members an opportunity to gain priority at any particular price level in return for providing market-improving behavior in the form of a longer-lived displayed quote. As discussed above, a great deal of the liquidity that is provided on exchanges is from market makers and automated liquidity providers, who have invested in technology and efficiency, which has resulted in many positive developments such as deep and liquid markets. Nasdaq is implementing ELO for Designated Retail Orders to increase access to and participation in Nasdaq's deep and liquid market for retail investors, who tend to be long term investors. The retail distinction the Exchange is proposing with ELO is similar to the distinction already made in providing a credit for displayed Designated Retail Orders under Rule 7018, as well as retail-focused programs on other exchanges such as the NASDAQ BX Retail Price Improvement Program.⁴¹

The Exchange believes that the proposed change is not unfairly discriminatory because it may lead to increased retail Order participation and improved execution quality for not only retail Orders, but also those orders that interact with retail Orders. The Exchange notes that the statutory standard under Section 6(b)(5) of the Act is that the proposed change not discriminate unfairly. Moreover, Section 6(b)(5) of the Act does not require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The Commission has stated that where the interests of long-term investors and short-term professional traders diverge, the Commission's duty is to uphold the interests

⁴⁰ See Rule 7014(g).

⁴¹ See BX Rule 4780.

of long-term investors.⁴² The Exchange believes that markets and price discovery best function through the interactions of a diverse set of market participants. The Exchange also believes that growth in internalization and the speed of execution has required differentiation of retail Orders, which are typically entered by long-term investors, from those of other market participants. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote increased retail Order participation on the Exchange. The Exchange believes that the transparency and competitiveness of offering ELO priority on a registered national securities exchange will result in a better execution experience for all investors. Consequently, the Exchange does not believe the proposed change discriminates unfairly.

In addition, the Exchange believes that the proposal will improve market quality for all participants and therefore is not unfairly discriminatory. Robust price discovery is paramount to the function of a market, and it is best served when there are many different perspectives on what the price and timing of a transaction should be. As noted previously, markets function best and prices are most efficient when there is diversity among market participant types and outlooks. Without such diversity, price discovery and liquidity suffer, and displayed spreads in the market potentially widen. Further, without enough participants there are no transactions and therefore no price discovery. For example, if there is only one market participant, there will never be a transaction. If instead there are two market participants, a transaction may occur but only if the two market participants have mutually complimentary desires (i.e., one is looking to sell and one is looking to buy) at that moment at a mutually agreeable price. If the two

⁴² See, e.g., Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37500 (June 29, 2005).

participants are the same type of participant and have a similar strategy, they are not likely to transact because they both may be looking to buy and thus there is no contra side interest to offset their desire to buy. If the two participants are different in nature, for example if one is a retail investor and one is an institutional investor, the likelihood of a transaction increases but the opportunity may still not present itself as they may not be looking to buy and sell the same security or they may have different time horizons. As more participant types are introduced to the market, the likelihood of potential transactions increases and consequently all of the participants involved benefit due to increased liquidity provided by the increasingly numerous offers to buy and sell from many different participant types. In addition, when there are market makers that compete to provide two-sided liquidity, they are able to provide a service to both a buyer and seller who might be on the opposite side of the market (i.e., one is a seller and one is a buyer) but the timing of the transaction does not precisely match. In this situation, the market maker is able to resolve the time gap. The proposed ELO Attribute represents the Exchange's effort to increase the participation of a particular segment of the market, which will increase the diversity of the marketplace and thereby improve general market function and price discovery while also better serving that particular segment – i.e., retail investors.

As stated previously, the Exchange believes that the proposed change will benefit both retail investors and other market participants. However, if the Exchange is incorrect, there are many substitutes in the market where participants can send their orders. There are twelve other exchanges, over thirty registered Alternative Trading Systems, and many other non-registered off-exchange trading platforms which a

participant may choose to use if the execution quality on Nasdaq suffers due to the ELO Attribute.

Nasdaq believes that requiring Designated Retail Orders to exist on the Nasdaq Book unaltered for at least one second is a meaningful time, representing a significant level of risk taken by the market participant in return for the priority in the Nasdaq Book. Although, one could argue that every stock is unique in the amount of time that represents a meaningful level of risk, the Exchange believes that implementing a program with individualized time requirements would be overly complex and would ultimately be too cumbersome for the industry to adopt. In addition, Nasdaq is initially requiring members to attest that at least 99% of the Designated Retail Orders submitted with Extended Life Priority exist on the Nasdaq Book unaltered for at least one second.⁴³ The Exchange believes that this standard is set sufficiently high, as it requires near perfect performance, while also providing some flexibility when a member that is following the spirit and intent of the ELO Attribute encounters unforeseen technical issues or other issues that result in de minimis non-compliance. As discussed above, Nasdaq will review Orders from members marked as Designated Retail Orders with the Extended Life Priority Attribute for compliance on a monthly basis. Eligibility for a given monthly will be based on the previous month's analysis. Within five business days of the end of a given month, Nasdaq will determine whether a participant has met the eligibility requirements. If a member's Orders do not qualify, it will not be eligible for Extended Life Priority for the month immediately following the month in which it did not meet the eligibility requirements. Following an ineligible month a member may once again

⁴³ Nasdaq will periodically assess the effectiveness of the eligibility criteria, and make any changes to the criteria through rulemaking.

participate in the program if it completes a new attestation. If a member is determined to have not met the eligibility standards a second time, it will not be eligible for Extended Life Priority for the two months immediately following the month in which it did not meet the eligibility requirements for the second time. If a member is determined to have not met the eligibility standards for a third time, it is no longer eligible to participate in the program. In addition, Nasdaq is developing additional market surveillance capability to identify any potential misuse of the proposed Order Attribute. Thus, Nasdaq believes that the attestation process coupled with rigorous monitoring and increasing periods of ineligibility for repeated non-compliance with the eligibility standards will serve to dissuade any member from abusing the attestation process, thereby protecting investors and the public interest.⁴⁴

Nasdaq believes that, if successful, the proposed change may bring greater stability to the Displayed quote and increase Displayed size on Nasdaq. Thus, Nasdaq believes that the Extended Life Priority Attribute is good for market structure because it may provide incentive to market participants that are long-term investors and may diversify Order interaction on Nasdaq, thereby enhancing price discovery and market resiliency.

Although the proposed change is novel in U.S. equity markets, certain U.S. options markets currently grant preference in their order books for customer orders.⁴⁵ On

⁴⁴ Nasdaq notes that members entering Orders with Extended Life Priority are subject to regulatory review and inspection, including a review of their procedures and processes for compliance with Extended Life Priority eligibility.

⁴⁵ See, e.g., PHLX Rule 1014(g)(vii)(B) (providing that quotations entered electronically by the specialist, an RSQT or an SQT that do not cause an order resting on the limit order book to become due for execution may be matched at any time by quotations entered electronically by the specialist and/or other SQTs

the NASDAQ PHLX options market, priority in the order book is given to Orders entered for a customer account over a controlled account. A controlled account includes any account controlled by or under common control with a broker-dealer, and customer accounts are all other accounts.⁴⁶ Moreover, the concept of rewarding market participants that provide Orders that live for a certain minimum time is currently used in Canada by the Toronto Stock Exchange. Named the “Long Life” order type, it is designed to enhance the quality of execution for natural investors and their dealers by rewarding those willing to commit liquidity to the book for a minimum period of time and by enabling participants to gain priority in return for a longer resting time.⁴⁷ The Exchange is proposing to initially limit the proposed change to Designated Retail Orders. Nasdaq believes that the retail customers represented by such Orders have the potential to immediately and with minimal technological effort, benefit from the proposed change. Moreover, Nasdaq believes that implementing the change incrementally will reduce risk, ensure that market participants are allowed adequate time to adjust to the new Order Attribute, and provide Nasdaq with useful data with which it can further improve the proposed Order Attribute.

For these reasons Nasdaq believes that the proposed Extended Life Order further perfects the mechanism of a free and open market, promotes competition, broadens

and RSQTs, and by ROT limit orders and shall be deemed to be on parity, subject to the requirement that orders of controlled accounts must yield priority to customer orders as set forth in Rule 1014(g)(i)(A)).

⁴⁶ See PHLX Rule 1014(g)(i)(A).

⁴⁷ See <https://www.tmx.com/newsroom/press-releases?id=352>; see also http://www.osc.gov.on.ca/documents/en/Marketplaces/xxr-tsx_20150818_amd-rule-book-policies.pdf (Notice of Approval).

participation in the market, considers the cost/benefit of implementation and provides market participants with incentive to provide market-improving Order flow.

4. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq recognizes that participants that invest in capabilities that allow them to drive price formation by repeatedly improving the NBBO on the Exchange bring tremendous value to the market by providing efficient prices, lowering costs for individual investors, and supporting price formation and stability for securities listed on Nasdaq and other U.S. exchanges. Nasdaq believes that retail users of ELO can coexist with existing participation strategies on Nasdaq to the benefit of all Exchange participants. For this reason, Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, Nasdaq believes that the proposed change increases competition and therefore improves participation by allowing segments that may currently be underserved on regulated exchanges to compete based on elements other than the sequence of order arrival. Specifically, the proposed change will allow market participants that have not invested in limit order queue placement but rather take risk by allowing an Order to rest on the Nasdaq Book unchanged for a certain duration to earn priority in the Nasdaq Book. Although market participants that do not submit Orders that qualify as Extended Life Orders may lose priority to Extended Life Orders on the Nasdaq Book, any burden arising therefrom is necessary to further refine the market to serve a broader group of market participants. The Exchange believes that increasing participation on a regulated exchange will always serve to improve the overall ecosystem on the Exchange. To the extent that the proposal can bring additional order flow from different segments of the market with different long term investment goals to the

Exchange, all market participants will benefit. Thus, the aim of the Proposal is not to disadvantage any one set of market participant, but rather to promote a healthy and inclusive market that will benefit all market participants, including those that currently contribute significant liquidity to the Exchange. Nasdaq believes Extended Life Priority will incentivize behavior from participants that currently, may struggle to participate and are willing to provide market-improving Order flow, which benefits all market participants. Moreover, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if they deem participation in Nasdaq's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting retail Order flow, Nasdaq also believes that the proposed change will promote competition among trading venues by making Nasdaq a more attractive trading venue for long-term investors and therefore capital formation.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
3. Amended Designated Retail Order Attestation Form.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-NASDAQ-2016-161)

February __, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt a New Extended Life Priority Order Attribute under Rule 4703, and to make related changes to Rules 4702, 4752, 4753, 4754, and 4757

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2017, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Extended Life Priority Order Attribute under Rule 4703, and to make related changes to Rules 4702, 4752, 4753, 4754, and 4757.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a new Extended Life Priority Order Attribute, which will allow Displayed Orders that are committed to a one-second or longer resting period to receive higher priority than other Displayed Orders of the same price on the Nasdaq Book. From its inception, Nasdaq has been an innovator and change agent in the financial markets. Innovation is in Nasdaq's DNA, beginning with the development of electronic trading and continuing today as we seek to bring new ideas to the financial markets, such as streamlined proxy voting using blockchain technology,³ strengthening investor protection through Limit Order Protection,⁴ and enhancing investor confidence in the Opening Cross.⁵ Nasdaq has not shied away from experimenting with new market

³ See <http://ir.nasdaq.com/releasedetail.cfm?releaseid=954654>; see also <http://www.pcworld.com/article/3033075/nasdaq-to-use-blockchain-to-record-shareholder-votes.html>.

⁴ See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-NASDAQ-2016-067).

⁵ See Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR-NASDAQ-2015-159).

structure in an effort to further refine our markets.⁶ The change proposed herein is another step forward in a long line of innovations Nasdaq has brought to the U.S. financial markets.

Background

As the markets became more automated in the 1990s and 2000s, and in particular since the implementation of the Regulation NMS Order Protection Rule (Rule 611) and the Access Rule (Rule 610) beginning in 2006,⁷ exchanges have generally based their execution algorithms on a price/display/time priority. Under this priority structure, the first displayed order at a price has priority over the next order and so on (this is also sometimes referred to as “First In First Out” or “FIFO”). All displayed orders have priority over non-displayed orders at a price level. The price/display/time priority structure has brought with it many benefits:

- Competition has increased
- Bid/Offer spreads have decreased
- Trading costs have decreased
- Access to the markets has been democratized

Nonetheless, the price/display/time priority system may not serve the interests of all market participants. In particular, the price/display/time priority system provides incentives to set new prices and optimize trading strategies based on the time priority in

⁶ For example, in February 2015 Nasdaq implemented an access fee pilot to determine the effect of reduced access fees on market quality. See Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015) (SR-NASDAQ-2014-128).

⁷ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006); see also Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

an order book. Increasing competition in the price/time priority structure has led to market velocity and displayed order duration becoming widely discussed and debated topics in recent years. Over time, as order placement competition on Nasdaq has grown, the importance of an order's ranking in the order queue has increased. In addition, 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 and routing strategies. As a result, when these smaller orders come to an exchange to access liquidity in the most liquid securities, there are orders deep in the queue that may not always have the opportunity to participate.

As an innovator, Nasdaq develops new functionality to promote the evolution of the markets. Nasdaq believes that it is imperative to address the needs of various market participants in new ways. Specifically, Nasdaq is proposing to supplement the ubiquitous price/display/time priority structure in the U.S. Equities markets to address the needs of market participants that focus their passive trading strategies on their ability to assume market risk by resting orders for an extended duration. Nasdaq believes that many of these participants have a longer investment horizon (i.e., long term investors) and therefore are not necessarily monitoring minute changes in the best bid and offer over very short time periods and simply want opportunities to participate passively at the prevailing market when transactions occur. Nasdaq has consulted a wide swath of its market participants, including buy-side institutions, market makers, investment banks, and retail broker-dealers. In addition, Nasdaq has consulted with corporate issuers that list their securities on Nasdaq. Nasdaq has weighed various ideas on how to expand interaction on Nasdaq's order book to more participants (e.g., long term investors) and

believes that it is better to provide incentives to reduce the potential for order adjustment and cancellation, rather than apply artificial latency mechanisms that may distort or have unintended consequences on market quality. Specifically, Nasdaq is proposing to provide an incentive to market participants that enter orders that are required to remain unaltered on the Nasdaq Book for a minimum time.

Proposal

Nasdaq is proposing to offer a new Order Attribute⁸ available during System Hours⁹ that will allow certain Displayed Orders¹⁰ to have priority ahead of other resting Displayed Orders on the Nasdaq Book at the same price. To receive this priority, an Order must be designated with the Order Attribute “Extended Life Priority” (“ELO”) to

⁸ The term “Order” means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. See Rule 4701(e). An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. Id. An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. Id. The Exchange describes the Order Types available on Nasdaq under Rule 4702 and describes the Order Attributes available on Nasdaq under Rule 4703.

⁹ The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). See Rule 4701(g).

¹⁰ Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as “Non-Displayed Orders.” An Order with a Display Order Attribute may be referred to as a “Displayed Order.” See Rule 4703(k).

indicate that the Order will not be altered or canceled by the member before the minimum resting time has elapsed.

Currently, Nasdaq's System¹¹ places a time-stamp on each Order entered by a member, which determines the time ranking of the Order for purposes of processing the Order.¹² The System presents resting Orders on the Nasdaq Book for execution against incoming Orders in accordance with a price/display/time algorithm.¹³ Price means that better priced Orders will be presented for execution first. For example, an Order to buy at \$10.00 would be ranked before an Order to buy at \$9.99. Display and Time mean that equally priced Orders with a Display Attribute will be ranked in time priority. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, are ranked in time priority behind all Displayed Orders.¹⁴ Processing Orders in this manner rewards market participants that take market risk by quickly and efficiently submitting Displayed Orders to the System to drive price formation on the Nasdaq Book. Price/display/time processing benefits the market by driving competition in Order flow, resulting in tighter bid/offer spreads and reducing overall costs to buy and sell securities. While this drive to reward setting new price levels (i.e., being first at a given price) has led to highly efficient markets with significant volume on Nasdaq being attributed to firms that provide two-sided liquidity, pure price/display/time processing

¹¹ As defined by Rule 4701(a).

¹² See Rule 4756(a)(2).

¹³ See Rule 4757. The Exchange is proposing to amend Rule 4757 to reflect the proposed exception to the price/display/time algorithm, as discussed below.

¹⁴ Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757. See Rule 4756(c)(3)(C).

may limit certain customer segments from effectively participating, particularly in highly-liquid securities where the sequence of the arrival of Orders is important to participation in the ensuing transactions on the Nasdaq Book.

The Exchange has observed that many of the market participants that have not focused on efficient Order queue placement of Displayed Order entry often represent retail customer and institutional Order flow, which tend to have longer investment time horizons. Nasdaq believes that promoting Displayed Orders with longer time horizons will enhance the market so that it works for a wider array of market participants, and will benefit publicly traded companies by promoting long-term investment in corporate securities, whether listed on Nasdaq or other exchanges. To further this goal, the Exchange is proposing an exception to the general priority rules¹⁵ to allow Displayed Orders with an Extended Life Priority Attribute to earn queue priority on the Nasdaq Book at any given price level ahead of all other Displayed Orders without the Extended Life Priority Attribute. As discussed below, when there are multiple Orders with Extended Life Priority resting on the Nasdaq Book at the same price they would be ranked by time, therefore making the priority price/display/ELO/time.

Another component to consider with regards to the optimal priority structure is the risk associated with submitting a Displayed Order into the market. There are various elements of risk that are considered when a market participant chooses a price and a time at which to post a Displayed Order on the Nasdaq Book. As noted earlier, price/display/time priority does not necessarily reward or recognize the various types of risks associated with an Order. Nasdaq believes that rewarding market participants that

¹⁵ Supra note 13.

enter Displayed Orders and commit to a longer resting time on the Nasdaq Book, would enable it to broaden the types of behavior and incentives provided, in particular in securities in which the depth of the Nasdaq Book may inhibit these Orders from being placed on Nasdaq. As noted above, these market participants are typically considered long term investors, representing retail and institutional order flow.

In its initial implementation, Nasdaq plans to support the Extended Life Priority Attribute for Designated Retail Orders.¹⁶ While the Extended Life Priority Attribute may ultimately prove to benefit a broader set of participants, Nasdaq recognizes that any change of this magnitude can be disruptive to its membership and, consequently, it is prudent to implement this concept in a phased and measured manner. Generally, retail investors are longer term investors who measure stock performance over hours, days, months, etc. rather than seconds or milliseconds. Nasdaq recognizes that there are other market participants that are also long term investors in the market, such as institutional investors. To ensure that these market participants' needs are addressed, Nasdaq

¹⁶ A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. See Rule 7018. The proposed change will not affect how Orders entered by sponsored access are treated for purposes of determining whether they are Designated Retail Orders.

anticipates that it will extend the program in a second phase to all Orders that meet the requirements of the Extended Life Priority Attribute after its successful implementation with Designated Retail Orders.¹⁷ The second phase is likely to operate differently from the retail phase as the participant types that will be eligible to use ELO could be more broad and diverse than the narrow focus of this first retail-oriented phase. Furthermore, for the avoidance of doubt, any such subsequent phase that broadens the participants that are eligible to use ELO will be proposed in a distinct rule filing by the Exchange.

During the initial retail phase, which is what is being proposed in this rule filing, to be eligible to use the Extended Life Priority Attribute, a member¹⁸ must complete an attestation provided by Nasdaq, stating that the Designated Retail Orders it assigns an Extended Life Priority Attribute will meet the minimum performance standards required by Nasdaq. Nasdaq will determine from time to time what the appropriate parameters are with regards to how firms may qualify for the Extended Life Attribute on Designated Retail Orders, with any changes made through rulemaking with the Commission. Initially, Nasdaq will require that at least 99% of Designated Retail Orders with the Extended Life Priority Attribute exist unaltered on the Nasdaq Book for a minimum of one second.¹⁹ For purposes of calculating the percentage of Orders with ELO that live

¹⁷ Any such change, which would be made through a separate filing with the Commission to amend the program, will likely require certain significant changes to the operation of the ELO Attribute to account for the different participants eligible to use the Attribute.

¹⁸ Initial and continued compliance with the ELO eligibility requirements is calculated by member, as the term is defined by Rule 0120(i).

¹⁹ Nasdaq notes that any change to an Order that would currently result in an Order losing priority (i.e., a change in the Order's time stamp) would also result in an Order with ELO to be considered altered, and thus stopping or restarting the clock in terms of determining whether the Order lived for one second or not. See Rule

for one second or longer, for unexecuted Orders the Exchange measures the number of ELO Orders that lived for one second or longer and divides that value by the number of Orders that were marked as ELO for a given member. For example, if a firm marked 100 of their Designated Retail Orders as ELO and one Order rested on the book for less than one second and the other 99 Orders rested on the book for one second or more, 99% of the member's Orders have met the minimum one-second time frame and the member would be in compliance with the program. Similarly, if the member submitted 100 Designated Retail Orders as ELO and 89 Orders rested on the book unaltered for at least one second and 11 Orders rested on the book unaltered for less than one second, 89% of the member's Orders would have met the one-second requirement and the member would be out of compliance with the ELO eligibility requirements. The Exchange selected one second based on its analysis of the nature of the markets and what it views as a meaningful length of time during which a market participant would take on significant risk balanced against what it believes is the minimum time an Order on the Exchange should exist to improve the quality of the market. The Exchange selected the 99% requirement based on its belief that, while requiring near perfection in terms of compliance, it would allow for flexibility when a member that is following the spirit and intent of the ELO Attribute encounters unforeseen technical issues or other issues that

4756(a). Thus, any type of update that creates a new timestamp for priority would count as a modification of the order. For example, each time an order is updated due to pegging, repricing, or reserve replenishment, the timer is restarted. Full cancellations would also stop the timer with regards to determining the life of an order. Executions, including partial executions, would not be counted as modifications. Similarly, reductions to the size of a Designated Retail Order with ELO prior to one second elapsing would not be considered to be altered with respect to determining whether the Order lived for one second or not.

result in de minimis non-compliance. The Exchange will monitor the effectiveness of both requirements and adjust them as needed.²⁰

The one second timeframe would begin at the point the Order is entered into the Nasdaq Book and would conclude once the Order is removed from the Nasdaq Book or modified by the participant or the System.²¹ An execution of an Order with the Extended Life Attribute in less than one second due to a full or partial execution of the Order would not count as a modification or cancellation of the Order.²² Orders with certain attributes are designed to be modified by the system under certain circumstances. For example, an Order with a Primary or Market Pegging Attribute²³ is repriced to maintain a relationship to the NBBO. Currently, any time an Order with a Primary or Market Pegging Attribute is repriced by the System, the Order receives a new time stamp which will determine its time priority anew on the Nasdaq Book. An Order with the Extended Life Attribute and a Primary or Market Pegging Attribute would receive a new timestamp for priority on the Nasdaq Book upon repricing, and would be ranked with ELO priority with other ELO

²⁰ Any change to the requirements would be proposed through the rulemaking process.

²¹ Thus, the one second requirement would not begin for an Order designated with ELO priority which is routed upon receipt, until that Order returned to Nasdaq and is posted on the Nasdaq Book.

²² A sub-second partial execution of an ELO Order is effectively in compliance with the ELO eligibility requirement of one second.

²³ Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if Nasdaq is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging will be set with reference to the highest bid or lowest offer disseminated by a market center other than Nasdaq. See Rule 4703(d). ELO is available for Orders with Primary and Market Pegging Attributes, but not Orders with Midpoint Pegging as discussed below.

Orders at the price level in time priority based on the new timestamp. For example, if the Inside Offer is \$11.06 at the time a Designated Retail Order to sell with the Primary Pegging and ELO Attributes is entered into the System, the Order would be priced at \$11.06 and ranked in time priority among other Orders with the ELO Attribute at that price. If the Inside Offer then moves to \$11.07, the Order would have its price adjusted to \$11.07, consistent with the Primary Pegging Attribute, receive a new time stamp, and be entered as a new Order with the ELO Attribute ranked in time priority with other ELO Orders at that price. Each time an ELO with a Primary or Market Pegging Attribute has its price updated, it is considered a new order for the purposes of determining its lifetime with respect to the ELO eligibility. Essentially, each price update is considered a separate Order for determining compliance with the program.

Nasdaq will require any member that enters Designated Retail Order with an Extended Life Priority Attribute to attest that it will comply with the minimum performance standards required by Nasdaq under the proposed new Rule 4703(m) to be eligible to enter Designated Retail Orders with an Extended Life Priority Attribute.

For purposes of inclusion in the program, Nasdaq will carefully monitor members' use of the Extended Life Priority Attribute on a monthly basis and will not rely solely on a member's attestation with regard to Extended Life Priority usage. Nasdaq will determine whether a member was in compliance with the eligibility requirements for a given month within five business days of the end of that month. Any member that has not met the requirements in a month will be ineligible to receive Extended Life Priority treatment for its Orders in the month immediately following the month in which it did not

comply.²⁴ Following the end of the ineligible month, a member may once again participate in the program if it completes a new attestation for the following month. If a member fails to meet the eligibility standards a second time, its Orders will not be eligible for Extended Life Priority for the two months immediately following the month in which it did not meet the eligibility requirements for the second time. If a member fails to meet the eligibility standards for a third time, it is no longer eligible to receive Extended Life Priority for its Orders.

Concurrently with the initial launch of the Extended Life Priority Attribute, the Exchange will implement new surveillances to identify any potential misuse of the proposed Order Attribute. Members are held to the highest standards on Nasdaq and any attempted manipulation or misrepresentation of the nature of an Order with Extended Life Priority (e.g., a non-retail Order as a Designated Retail Order) would be a violation of Nasdaq's rules. For example, Rule 2110A requires a member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade. Rule 2120 prohibits a member from effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. Like the current surveillances Nasdaq conducts to detect violation of securities laws and Nasdaq's rules, the new surveillances would identify potential violative conduct that would be investigated by Nasdaq and FINRA. If

²⁴ The System will prevent a member that is not eligible to participate in the program from entering Orders that are flagged with Extended Life Priority (including such designation on the port level).

the conduct is found to be violative, the member(s) that participated in the violative conduct would be subject to disciplinary action.²⁵

To implement the retail phase of the Extended Life Priority Attribute, Nasdaq is developing a unique identifier that will be appended to each Order entered by the member. Orders with the Extended Life Priority Attribute may be individually designated with the new identifier or entered through an Order port that has been set to designate, by default, all Orders with the new identifier. Orders marked with the new identifier -- whether on an Order-by-Order basis or via a designated port -- will be disseminated via Nasdaq's TotalView ITCH data feed.²⁶ Thus, market participants will be able to identify Designated Retail Orders that have the Extended Life Priority Attribute.²⁷ TotalView ITCH is an order book feed which allows a market participant to recreate the Nasdaq Book order-by-order. Because Orders with ELO have priority over all non-ELO Orders at a given price level, notwithstanding that the non-ELO order(s) were entered first in time, it is important to be able to identify Designated Retail Orders that have the Extended Life Priority Attribute on TotalView ITCH in order to properly

²⁵ See Nasdaq Rule 9000 Series.

²⁶ See <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> for a description of TotalView ITCH.

²⁷ Nasdaq notes that this is similar to how BATSZ and BATS EDGX identify retail orders pursuant to BZX Rule 11.25(e) and EDGX Rule 11.21, and as described in the PITCH data feed specifications under "ParticipantID." See US Equities/Options Multicast Depth of Book (PITCH) Specification at p. 22 (available at http://cdn.batstrading.com/resources/membership/BATS_US_EQUITIES_OPTIONS_MULTICAST_PITCH_SPECIFICATION.pdf).

recreate the Nasdaq Book.²⁸ The Exchange notes that it is not disseminating the identifier via the SIP because there is no concept of price/time priority in the data provided by the SIP. Furthermore, the SIP does not serve as an order book data feed and thus a participant would not use the SIP to recreate the Nasdaq Book. Therefore, an ELO identifier would not be needed or helpful on the SIP data feed. It is also worth noting that the Nasdaq TotalView ITCH feed is broadly available as it is consumed by thousands of market participants.

As noted above, if an Order with Extended Life Priority is not marketable upon entry, the Order will post and display at its limit price, and will be ranked under the price/display/ELO/time priority structure. In other words, an Order with the Extended Life Priority Attribute will be ranked ahead of other Displayed Orders that do not have the Extended Life Priority Attribute and behind any other Displayed Orders with Extended Life Priority that were received previously. For example, if five members attest to enter Orders designated with the Extended Life Priority Attribute and each member enters a Displayed Order so designated at the same price, the Order entered first will receive the highest priority among the five, the second Order will be ranked second, and so on; all Displayed Orders entered at the same price and not designated with the

²⁸ In certain circumstances, such identification could raise concern because it may lead to “information leakage.” Information leakage is often associated with market participants that are building or unwinding significant trading positions that may have market impact or a trading strategy that is proprietary and therefore confidential. For example, a large buyer might break one large buy order into several smaller orders to allow the market to absorb the demand in small chunks. Retail investor orders generally are not part of a broader multi-order trading strategy. Retail investor interest is most often represented with one order at a single price and, as such, information leakage is not a concern.

Extended Life Priority Attribute will be ranked behind the five Orders designated with the Extended Life Priority Attribute.

There are three instances in which an Order entered with the Extended Life Priority Attribute will not gain ELO priority. First, an Order with the Extended Life Priority Attribute will only have Extended Life Priority ranking at its displayed price. If an Order with the Extended Life Priority Attribute is ranked at a Non-Displayed price, it will be ranked without Extended Life Priority among Non-Displayed Orders. For example, if a Price to Comply Order²⁹ with an Extended Life Priority Attribute to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be displayed at \$10.99, but ranked at a non-displayed price of \$11 without Extended Life Priority. If the Best Offer changes to \$11.01, the Price to Comply Order would be ranked and displayed at \$11 with Extended Life Priority.

Second, a Designated Retail Order with a Non-Display Attribute that is also entered with Extended Life Priority will be added to the Nasdaq Book as a Non-Display Order without Extended Life Priority, following price/display/time processing among resting Orders without Extended Life Priority. For example, neither an Order with Minimum Quantity³⁰ or Midpoint Pegging³¹ Attributes may receive Extended Life

²⁹ See Rule 4702(b)(1).

³⁰ Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. An Order with Minimum Quantity is always posted to the Nasdaq Book as Non-Display. See Rule 4703(e).

³¹ Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer, and is always posted as Non-Display. See Rule 4703(d). The Exchange notes that Extended Life Priority is available for other types of Pegged Orders, but is not available for the Market Maker Peg Order. The

Priority as both Attributes may only be Non-Displayed. In certain cases, an Order may have an Attribute with a mix of Display and Non-Display size. Specifically, an Order with both an Extended Life Priority and a Reserve Size³² Attribute would have both a Displayed and Non-Displayed component. The Displayed portion of the Order would be eligible to receive Extended Life Priority while the Non-Display portion would not. Should the Displayed portion of the Order receive a full execution, the Reserve Size Attribute would cause the Order to replenish the Displayed quantity with the Non-Displayed reserve. The newly-replenished portion of the Order would receive a new time stamp and receive Extended Life Priority based on that time stamp.³³ For example, if an Order to buy at \$11.05 with Reserve Size and ELO Attributes is posted with a Displayed Size of 200 shares, along with a Non-Displayed reserve portion of 3,000, the 200 shares would be ranked with other Orders with ELO priority at that price in time priority. If the 200 Displayed shares were then executed, 200 shares would be replenished from reserve and post as a new Order with ELO priority with a new timestamp, ranked in time priority with other Orders with ELO priority, and the Non-Displayed Order would be decremented to 2,800 shares. For the purposes of calculating the lifetime of the ELO, each display portion would be counted as separate Orders. Therefore, in the above example, the first 200 shares that were executed would not impact the Order lifetime calculation because executions are not considered cancels or modifications of Orders.

Market Maker Peg Order is entered to satisfy a market maker's obligations and therefore by definition does not qualify as a Designated Retail Order.

³² See Rule 4703(h).

³³ As stated previously, the replenished portion of the reserve order would receive a new time stamp and a new timer would start for determining compliance with the ELO minimum resting time of one second.

However, if after the 200 shares were replenished, the Order were to be cancelled, the time the replenished displayed portion of the Order remained on the book before cancellation would determine the life of the Order for purposes of the ELO Attribute. For example, if the displayed ELO replenished from reserve were to be cancelled after 500 milliseconds, the Order would not be considered to have rested on the book for the one-second requirement under the proposal.

Third, while cross-specific Orders marked with Extended Life Priority will be eligible to participate in the Nasdaq Opening,³⁴ Closing³⁵ and Halt³⁶ Crosses, they will be ranked without Extended Life Priority.³⁷ Orders with the Extended Life Priority Attribute that are ranked on the Nasdaq Book (i.e., orders that are in the continuous market) will retain Extended Life Priority if they are part of the Cross execution. For example, if a Displayed Order and a Limit On Open Order are entered prior to the Nasdaq Opening Cross, both with Extended Life Priority, the Displayed Order would receive Extended Life Priority on the continuous Nasdaq Book but the Limit On Open Order, which is designated to participate first in the Nasdaq Opening Cross, would not receive Extended Life Priority. Both Orders would be eligible to participate in the Nasdaq Opening Cross, however, the Displayed Order would benefit from its preexisting Extended Life Priority when the Opening Cross is held, while the Limit On Open Order would be ranked with other such Orders in price time priority. Upon completion of the

³⁴ See Rule 4752.

³⁵ See Rule 4754.

³⁶ See Rule 4753.

³⁷ These are Orders that are designated to participate in the Opening or Closing Cross, and are not available for execution in continuous trading.

Opening Cross, if both Orders are not fully executed the Displayed Order would remain ranked on the Nasdaq Book with Extended Life Priority, based on its original timestamp, and the Limit On Open Order would join the continuous Nasdaq Book with Extended Life Priority based on the time at which it joins.

Implementation

As mentioned previously, the Exchange plans to implement ELO for Designated Retail Orders in a measured manner. The Exchange anticipates a rollout beginning with a small set of symbols and gradually expanding further. The Exchange will publish the symbols that are eligible for ELO on its website. Any orders submitted with ELO in symbols not eligible for ELO will be accepted as non-ELO Orders for those symbols.

The exact date of implementation will be reliant on several factors such as the results of the extensive testing program that Nasdaq employs, and industry events and initiatives. For example, the Exchange generally avoids rolling out new software at or around the day of the annual Russell Index Reconstitution. As such, the Exchange currently plans to implement the initial set of symbols for ELO in the third quarter of 2017. Nasdaq will notify market participants via an Equity Trader Alert once a specific date for the initial rollout is determined.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(5).

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. Nasdaq believes that the proposed change is consistent with this provision of the Act because it is an attempt to improve the quality of the market by rewarding market participants for longer-life Order flow. Importantly, Nasdaq is not applying any programmatic or intentional delay to incoming Orders that are attempting to access the market. Instead, Nasdaq's proposal seeks to provide an incentive to market participants to improve the market on Nasdaq by recognizing the value of certain behaviors. Nasdaq currently provides incentives in the form of reduced fees and rebates in return for market-improving behavior. For example, Nasdaq's NBBO Program provides pricing incentives for participants that, among other things, establish the NBBO.⁴⁰ With Extended Life Priority, Nasdaq is providing members an opportunity to gain priority at any particular price level in return for providing market-improving behavior in the form of a longer-lived displayed quote. As discussed above, a great deal of the liquidity that is provided on exchanges is from market makers and automated liquidity providers, who have invested in technology and efficiency, which has resulted in many positive developments such as deep and liquid markets. Nasdaq is implementing ELO for Designated Retail Orders to increase access to and participation in Nasdaq's deep and liquid market for retail investors, who tend to be long term investors. The retail distinction the Exchange is proposing with ELO is similar to the distinction already made in providing a credit for

⁴⁰ See Rule 7014(g).

displayed Designated Retail Orders under Rule 7018, as well as retail-focused programs on other exchanges such as the NASDAQ BX Retail Price Improvement Program.⁴¹

The Exchange believes that the proposed change is not unfairly discriminatory because it may lead to increased retail Order participation and improved execution quality for not only retail Orders, but also those orders that interact with retail Orders. The Exchange notes that the statutory standard under Section 6(b)(5) of the Act is that the proposed change not discriminate unfairly. Moreover, Section 6(b)(5) of the Act does not require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The Commission has stated that where the interests of long-term investors and short-term professional traders diverge, the Commission's duty is to uphold the interests of long-term investors.⁴² The Exchange believes that markets and price discovery best function through the interactions of a diverse set of market participants. The Exchange also believes that growth in internalization and the speed of execution has required differentiation of retail Orders, which are typically entered by long-term investors, from those of other market participants. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote increased retail Order participation on the Exchange. The Exchange believes that the transparency and competitiveness of offering ELO priority on a registered national securities exchange will result in a better execution experience for all investors. Consequently, the Exchange does not believe the proposed change discriminates unfairly.

⁴¹ See BX Rule 4780.

⁴² See, e.g., Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37500 (June 29, 2005).

In addition, the Exchange believes that the proposal will improve market quality for all participants and therefore is not unfairly discriminatory. Robust price discovery is paramount to the function of a market, and it is best served when there are many different perspectives on what the price and timing of a transaction should be. As noted previously, markets function best and prices are most efficient when there is diversity among market participant types and outlooks. Without such diversity, price discovery and liquidity suffer, and displayed spreads in the market potentially widen. Further, without enough participants there are no transactions and therefore no price discovery. For example, if there is only one market participant, there will never be a transaction. If instead there are two market participants, a transaction may occur but only if the two market participants have mutually complimentary desires (i.e., one is looking to sell and one is looking to buy) at that moment at a mutually agreeable price. If the two participants are the same type of participant and have a similar strategy, they are not likely to transact because they both may be looking to buy and thus there is no contra side interest to offset their desire to buy. If the two participants are different in nature, for example if one is a retail investor and one is an institutional investor, the likelihood of a transaction increases but the opportunity may still not present itself as they may not be looking to buy and sell the same security or they may have different time horizons. As more participant types are introduced to the market, the likelihood of potential transactions increases and consequently all of the participants involved benefit due to increased liquidity provided by the increasingly numerous offers to buy and sell from many different participant types. In addition, when there are market makers that compete to provide two-sided liquidity, they are able to provide a service to both a buyer and

seller who might be on the opposite side of the market (i.e., one is a seller and one is a buyer) but the timing of the transaction does not precisely match. In this situation, the market maker is able to resolve the time gap. The proposed ELO Attribute represents the Exchange's effort to increase the participation of a particular segment of the market, which will increase the diversity of the marketplace and thereby improve general market function and price discovery while also better serving that particular segment – i.e., retail investors.

As stated previously, the Exchange believes that the proposed change will benefit both retail investors and other market participants. However, if the Exchange is incorrect, there are many substitutes in the market where participants can send their orders. There are twelve other exchanges, over thirty registered Alternative Trading Systems, and many other non-registered off-exchange trading platforms which a participant may choose to use if the execution quality on Nasdaq suffers due to the ELO Attribute.

Nasdaq believes that requiring Designated Retail Orders to exist on the Nasdaq Book unaltered for at least one second is a meaningful time, representing a significant level of risk taken by the market participant in return for the priority in the Nasdaq Book. Although, one could argue that every stock is unique in the amount of time that represents a meaningful level of risk, the Exchange believes that implementing a program with individualized time requirements would be overly complex and would ultimately be too cumbersome for the industry to adopt. In addition, Nasdaq is initially requiring members to attest that at least 99% of the Designated Retail Orders submitted with

Extended Life Priority exist on the Nasdaq Book unaltered for at least one second.⁴³ The Exchange believes that this standard is set sufficiently high, as it requires near perfect performance, while also providing some flexibility when a member that is following the spirit and intent of the ELO Attribute encounters unforeseen technical issues or other issues that result in de minimis non-compliance. As discussed above, Nasdaq will review Orders from members marked as Designated Retail Orders with the Extended Life Priority Attribute for compliance on a monthly basis. Eligibility for a given month will be based on the previous month's analysis. Within five business days of the end of a given month, Nasdaq will determine whether a participant has met the eligibility requirements. If a member's Orders do not qualify, it will not be eligible for Extended Life Priority for the month immediately following the month in which it did not meet the eligibility requirements. Following an ineligible month a member may once again participate in the program if it completes a new attestation. If a member is determined to have not met the eligibility standards a second time, it will not be eligible for Extended Life Priority for the two months immediately following the month in which it did not meet the eligibility requirements for the second time. If a member is determined to have not met the eligibility standards for a third time, it is no longer eligible to participate in the program. In addition, Nasdaq is developing additional market surveillance capability to identify any potential misuse of the proposed Order Attribute. Thus, Nasdaq believes that the attestation process coupled with rigorous monitoring and increasing periods of ineligibility for repeated non-compliance with the eligibility standards will serve to

⁴³ Nasdaq will periodically assess the effectiveness of the eligibility criteria, and make any changes to the criteria through rulemaking.

dissuade any member from abusing the attestation process, thereby protecting investors and the public interest.⁴⁴

Nasdaq believes that, if successful, the proposed change may bring greater stability to the Displayed quote and increase Displayed size on Nasdaq. Thus, Nasdaq believes that the Extended Life Priority Attribute is good for market structure because it may provide incentive to market participants that are long-term investors and may diversify Order interaction on Nasdaq, thereby enhancing price discovery and market resiliency.

Although the proposed change is novel in U.S. equity markets, certain U.S. options markets currently grant preference in their order books for customer orders.⁴⁵ On the NASDAQ PHLX options market, priority in the order book is given to Orders entered for a customer account over a controlled account. A controlled account includes any account controlled by or under common control with a broker-dealer, and customer accounts are all other accounts.⁴⁶ Moreover, the concept of rewarding market participants that provide Orders that live for a certain minimum time is currently used in Canada by the Toronto Stock Exchange. Named the “Long Life” order type, it is

⁴⁴ Nasdaq notes that members entering Orders with Extended Life Priority are subject to regulatory review and inspection, including a review of their procedures and processes for compliance with Extended Life Priority eligibility.

⁴⁵ See, e.g., PHLX Rule 1014(g)(vii)(B) (providing that quotations entered electronically by the specialist, an RSQT or an SQT that do not cause an order resting on the limit order book to become due for execution may be matched at any time by quotations entered electronically by the specialist and/or other SQTs and RSQTs, and by ROT limit orders and shall be deemed to be on parity, subject to the requirement that orders of controlled accounts must yield priority to customer orders as set forth in Rule 1014(g)(i)(A)).

⁴⁶ See PHLX Rule 1014(g)(i)(A).

designed to enhance the quality of execution for natural investors and their dealers by rewarding those willing to commit liquidity to the book for a minimum period of time and by enabling participants to gain priority in return for a longer resting time.⁴⁷ The Exchange is proposing to initially limit the proposed change to Designated Retail Orders. Nasdaq believes that the retail customers represented by such Orders have the potential to immediately and with minimal technological effort, benefit from the proposed change. Moreover, Nasdaq believes that implementing the change incrementally will reduce risk, ensure that market participants are allowed adequate time to adjust to the new Order Attribute, and provide Nasdaq with useful data with which it can further improve the proposed Order Attribute.

For these reasons Nasdaq believes that the proposed Extended Life Order further perfects the mechanism of a free and open market, promotes competition, broadens participation in the market, considers the cost/benefit of implementation and provides market participants with incentive to provide market-improving Order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq recognizes that participants that invest in capabilities that allow them to drive price formation by repeatedly improving the NBBO on the Exchange bring tremendous value to the market by providing efficient prices, lowering costs for individual investors, and supporting price formation and stability for securities listed on Nasdaq and other U.S. exchanges. Nasdaq believes that retail users of ELO can coexist with existing participation strategies on Nasdaq to the benefit of all Exchange

⁴⁷ See <https://www.tmx.com/newsroom/press-releases?id=352>; see also http://www.osc.gov.on.ca/documents/en/Marketplaces/xxr-tsx_20150818_amd-rule-book-policies.pdf (Notice of Approval).

participants. For this reason, Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, Nasdaq believes that the proposed change increases competition and therefore improves participation by allowing segments that may currently be underserved on regulated exchanges to compete based on elements other than the sequence of order arrival. Specifically, the proposed change will allow market participants that have not invested in limit order queue placement but rather take risk by allowing an Order to rest on the Nasdaq Book unchanged for a certain duration to earn priority in the Nasdaq Book. Although market participants that do not submit Orders that qualify as Extended Life Orders may lose priority to Extended Life Orders on the Nasdaq Book, any burden arising therefrom is necessary to further refine the market to serve a broader group of market participants. The Exchange believes that increasing participation on a regulated exchange will always serve to improve the overall ecosystem on the Exchange. To the extent that the proposal can bring additional order flow from different segments of the market with different long term investment goals to the Exchange, all market participants will benefit. Thus, the aim of the Proposal is not to disadvantage any one set of market participant, but rather to promote a healthy and inclusive market that will benefit all market participants, including those that currently contribute significant liquidity to the Exchange. Nasdaq believes Extended Life Priority will incentivize behavior from participants that currently, may struggle to participate and are willing to provide market-improving Order flow, which benefits all market participants. Moreover, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if

they deem participation in Nasdaq's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting retail Order flow, Nasdaq also believes that the proposed change will promote competition among trading venues by making Nasdaq a more attractive trading venue for long-term investors and therefore capital formation.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-161 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-161. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2016-161 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

Robert W. Errett
Deputy Secretary

⁴⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

New text is underlined.



Effective Date: February 2, 2016

THE NASDAQ STOCK MARKET, LLC (“NASDAQ” OR “EXCHANGE”) DESIGNATED RETAIL ORDER ATTESTATION FORM

INSTRUCTIONS: This form is to be completed by Nasdaq members that wish to submit Designated Retail Orders to the Exchange for execution.

A “Designated Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a “natural person” can include orders on behalf of accounts that are held in a corporate legal form -- such as an Individual Retirement Account, Corporation, or a Limited Liability Company -- that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as “Designated Retail Orders” comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders (“Retail Order”).

Please note: If A Nasdaq member uses an algorithm to determine to send an existing Retail Order into the Exchange, such order is a Retail Order and is not deemed to have originated from a trading algorithm strictly as a result of the brokerage firm’s algorithm, provided that the Nasdaq member assures that the Retail Order meets the underlying requirements, including that the routing algorithm does not change the terms of the order with respect to price or side of the market.

A Nasdaq member may submit Retail Orders in a riskless principal capacity, as well as an agency capacity, provided that the member (1) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to FINRA (or another self-regulatory organization if not required under FINRA rules); and (2) has written policies and procedures to ensure that riskless principal transactions for which the member is relying on this exception comply with applicable FINRA rules.

1. CUSTOMER INFORMATION

Name of Nasdaq Member:

Web CRD Number:

Business Contact Name:

Business Contact Phone:

Business Contact E-Mail:

2. BUSINESS AND TECHNOLOGY QUESTIONS

<p>As A Nasdaq Member Organization, do you currently have connectivity to the Exchange?</p>	<p>Yes</p>	<p>No</p>
<p>Is this connection utilized for order routing, receiving market data or both?</p>	<p>Order Routing</p> <p>Receiving Market Data</p> <p>Both</p>	

If you are routing retail order flow on behalf of one or more broker-dealer customers, your firm will be required to execute a separate document with this firm or firms.

3. RETAIL ORDER SUPERVISORY REQUIREMENTS

By executing this Application, the Applicant attests that substantially all orders submitted to the Exchange by the Applicant would meet the qualifications for such orders under the Retail Order rule.

Applicant further attests that it has in place Written Supervisory Procedures (“WSPs”). Such WSPs require Applicant to:

(i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements specified by the Exchange, including that the Applicant maintain adequate substantiation that substantially all orders sent to the Exchange as Retail Orders meet the definition and that those orders not meeting the definition are agency orders that cannot be segregated from Retail Orders due to system limitations and are de minimis in terms of the overall number of Retail Orders submitted and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements.

In addition, if Applicant does not itself conduct a retail business, but routes Retail Orders on behalf of another broker-dealer, Applicant’s WSPs must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order.

The Applicant must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the Applicant’s orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements specified by the Exchange; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

Name (Printed):

Name (Signature):

Title:

Date:

Please return this completed form to Subscriber Services:

Email: subscriber@nasdaq.com

Fax: +1 212 231 5426

ATTACHMENT A

A Member is required to either designate certain of its order entry ports as “Retail Order Ports” and attest that substantially all orders submitted to the Exchange via such Designated Retail Order Ports are Retail Orders or tag each order as a “Retail Order” in the order entry message. Additionally, a Member is required to designate its Designated Retail Order Ports, including adding new Designated Retail Order Ports or removing existing Retail Order Ports that would no longer be used to submit Retail Orders, no later than the fifth trading day of the month in which the desired change is to become effective.

If your firm would like to create new ports to be designated as “Designated Retail Order Ports” please contact Subscriber Services at subscriber@nasdaq.com or +1 212 231 5180.

For additional information on marking orders as retail on an order-by-order basis, please view the FIX Specifications. Checking this box identifies the Member’s intention to mark Retail Orders by FIX.

Nasdaq Member:

Title:

Date:

ATTACHMENT B

Orders with “Extended Life Priority” receive priority in the Nasdaq Book above other Orders resting on the Nasdaq Book at the same price that are not designated with Extended Life Priority. To be eligible to enter Designated Retail Orders with Extended Life Priority, a Member is required to meet certain eligibility criteria provided by Nasdaq Rule 4703(m). By signing below, your firm is attesting that: (i) it will comply with the eligibility criteria provided by Nasdaq Rule 4703(m); (ii) it understands that if it does not comply during any given month, it will be ineligible to enter Designated Retail Orders with Extended Life Priority for the immediately following month and must thereafter execute a new attestation under this Attachment B to become eligible again to enter Designated Retail Orders with Extended Life Priority; (iii) it understands that if it does not comply during any given month for a second time, it will be ineligible to enter Designated Retail Orders with Extended Life Priority for the immediately following two months, and must thereafter execute a new attestation under this Attachment B to become eligible again to enter Designated Retail Orders with Extended Life Priority; and (iv) it understands that if it does not comply during any given month for a third time, it will be ineligible to enter Designated Retail Orders with Extended Life Priority permanently.

A Member can designate certain of its order entry ports as “Retail Extended Life Order Ports” and attest that substantially all orders submitted to the Exchange via such Designated Retail Extended Life Order Ports are Retail Orders that meet the eligibility criteria, or tag each order as a “Retail Extended Life Order” in the order entry message.

If your firm would like to create new ports to be designated as “Designated Retail Extended Life Order Ports” please contact Subscriber Services at subscriber@nasdaq.com or +1 212 231 5180.

For additional information on marking orders as retail on an order-by-order basis, please view the Technical Specifications.

Name (Printed):

Name (Signature):

Title: _____

Date: _____

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The NASDAQ Stock Market Rules

* * * * *

4702. Order Types.

(a) No change.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Price to Comply Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.
- Reserve Size (available through RASH, FIX and QIX only).
- A Time-in-Force other than IOC. (A Price to Comply Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Comply Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Comply Order would lock or cross.
- Routing (available through RASH, FIX and QIX only).
- Primary Pegging and Market Pegging (available through RASH, FIX, and QIX only).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.

- Display. A Price to Comply Order is always displayed, although, as provided above, it may also have a non-displayed price and/or Reserve Size.
- Extended Life Priority.

(2) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Price to Display Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation.
- Size.
- Reserve Size (available through RASH, FIX and QIX only).
- A Time-in-Force other than IOC. (A Price to Display Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Display Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Display Order would lock or cross.
- Routing (available through RASH, FIX and QIX only).
- Primary Pegging and Market Pegging (available through RASH, FIX, and QIX only).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- Attribution. All Price to Display Orders are Attributable Orders.
- Display. A Price to Display Order is always displayed (but may also have Reserve Size).
- Extended Life Priority.

(3) No change.

(4) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Post-Only Order:

- **Price.** As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- **Size.**
- **Time-in-Force;** provided, however, that a Post-Only Order with a Time-in-Force of IOC may not be entered through RASH, QIX, or FIX.
- **Designation as an ISO.** In accordance with Regulation NMS, a Post-Only Order designated as an ISO that locked or crossed a Protected Quotation would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, as described above, a Post-Only Order designated as an ISO that locked or crossed an Order on the Nasdaq Book would either execute at time of entry or would have its price adjusted prior to posting. Accordingly, the System would not interpret receipt of a Post-Only Order marked ISO that had its price adjusted prior to posting as the basis for determining that any Protected Quotation at the Order's original entered limit price level had been executed for purposes of accepting additional Orders at that price level. However, if the Post-Only Order is ranked and displayed at its adjusted price, the System would consider the adjusted price level to be open for purposes of accepting additional Orders at that price level. For example, assume that there is a Protected Offer at \$11 and a Participant enters a Post-Only Order marked ISO to buy at \$11. If there are no Orders to sell at \$11 on the Nasdaq Book, the Order to buy will be displayed and ranked at \$11, since the designation of the Order as an ISO reflects the Participant's representation that it has routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, if there was also an Order to sell at \$11 on the Nasdaq Book, the Post-Only Order will be repriced, ranked, and displayed at \$10.99. In that case, the mere fact that the Post-Only Order was designated as an ISO would not allow Nasdaq to conclude that the \$11 price level was "open" for receiving orders to buy at that price; the \$11 price level would be considered open only if market data received by the System demonstrated that the Protected Offer at \$11 had been removed or if a subsequent Displayed Order marked ISO was received and ranked at that price.
- **Attribution.**
- **Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross** (available through OUCH and FLITE only).

- Display. A Post-Only Order is always displayed, although as provided above, may also have a non-displayed price.
- Extended Life Priority.

(5) – (13) No change.

* * * * *

4703. Order Attributes

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) – (l) No change.

(m) Extended Life Priority. Extended Life Priority is an Order Attribute that allows a Participant to receive priority in the Nasdaq Book above other Orders resting on the Nasdaq Book at the same price that are not designated with Extended Life Priority. Extended Life Priority is only available for Displayed Orders. Orders must qualify as a Designated Retail Order to be eligible for Extended Life Priority. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they will comply with the eligibility criteria of this rule. To be eligible to enter Orders with Extended Life Priority, at least 99% of Designated Retail Orders with the Extended Life Priority Attribute entered by the Participant must exist unaltered on the Nasdaq Book for a minimum of one second. Executions would not be counted as an Order modification for purposes of determining compliance with the qualification criteria.

If an Order with Extended Life Priority is not marketable upon entry, the Order will post and display at its limit price, and will be ranked with Extended Life Priority behind any other Orders with Extended Life Priority in time priority.

An Order entered with Extended Life Priority that is adjusted by the System upon entry to be displayed on the Nasdaq Book at one price, but ranked on the Nasdaq Book at a different non-displayed price will be ranked on the Nasdaq Book without an Extended Life Priority Attribute at the non-displayed price. If the Order is subsequently adjusted to be displayed and ranked on the Nasdaq Book at the same price, the Order will be assigned Extended Life Priority and ranked on the Nasdaq Book in time order among other Orders with Extended Life Priority in time priority.

A Designated Retail Order with a Non-Display Attribute that is also entered with Extended Life Priority will be ranked on the Nasdaq Book as a Non-Display Order without Extended Life Priority.

For purposes of the Nasdaq Opening, Closing and Halt Crosses, all Orders with Extended Life Priority on the Nasdaq Book upon the initiation of a Cross may participate in such a

Cross and retain priority among orders posted on the Nasdaq Book that also participate in the Cross. Upon initiation of a Cross, all Orders with Extended Life Priority on the Nasdaq Book that are eligible to participate in a Cross will be processed in accordance with Rule 4752 (Opening Process), Rule 4753 (Nasdaq Halt Cross), or Rule 4754 (Nasdaq Closing Cross), as applicable. Orders with Extended Life Priority that are held by the System for participation in the Opening or Closing Cross do not have Extended Life Priority in the Cross, but will be assigned Extended Life Priority if the Order joins the Nasdaq Book upon completion of the Cross. Any Orders with Extended Life Priority that are not executed in a Cross will be ranked on the Nasdaq Book with Extended Life Priority.

* * * * *

4752. Opening Process

(a) – (c) No change.

(d) Processing of Nasdaq Opening Cross. For System securities, the Nasdaq Opening Cross shall occur at 9:30, and market hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) – (2) No change.

(3) If the Nasdaq Opening Cross price is selected and fewer than all shares of MOO, LOO, OIO and Early Market Hours Orders that are available in the Nasdaq Market Center would be executed, all Quotes and Orders shall be executed at the Nasdaq Opening Cross price in the following priority:

(A) MOO and Early Market Hours market peg orders, with time as the secondary priority;

(B) Orders with Extended Life Priority, LOO orders, Early Market Hours limit orders, OIO orders, SDAY limit orders, SGTC limit orders, GTMC limit orders, SHEX limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price based on limit price with Extended Life Priority[time] as the secondary priority and time as the tertiary priority;

(C) Orders with Extended Life Priority, LOO orders, OIO Orders, Early Market Hours and displayed interest of quotes, SDAY limit orders, SGTC limit orders, GTMC limit orders, and SHEX limit orders at the Nasdaq Opening Cross price with Extended Life Priority[time] as the secondary priority and time as the tertiary priority;

(D) Reserve interest of quotes, SDAY limit orders, SGTC limit orders, and GTMC limit orders and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and

(4) No change.

* * * * *

4753. Nasdaq Halt Cross

(a) No change.

(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120(a)(1), (4), (5), (6), (7) or (11), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and Market hours trading shall commence when the Nasdaq Halt Cross concludes.

(1) – (2) No change.

(3) If the Nasdaq Halt Cross price is selected and fewer than all shares of Eligible Interest that are available in the Nasdaq Market Center would be executed, all Eligible Interest shall be executed at the Nasdaq Halt Cross price with[in] price as the primary priority[/time], Extended Life Priority as the secondary priority and time as the tertiary priority.

(4) No change.

(c) Nasdaq-listed securities that are the subject of a trading halt initiated pursuant to Rule 4120(a) and in which no Halt Cross occurs, shall open for trading at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:

(1) Orders shall be added to the book in Extended Life Priority as the primary priority, and time as the secondary priority.

(2) No change.

* * * * *

4754. Nasdaq Closing Cross

(a) No change.

(b) Processing of Nasdaq Closing Cross. The Nasdaq Closing Cross will begin at 4:00:00 p.m. EST, and post-market hours trading will commence when the Nasdaq Closing Cross concludes.

(1) – (2) No change.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC IO and Close Eligible Interest would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) Orders with Extended Life Priority, LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price based on price with Extended Life Priority[time] as the secondary priority and time as the tertiary priority;

(C) Orders with Extended Life Priority, LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with Extended Life Priority[time] as the secondary priority and time as the tertiary priority;

(D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) – (8) No change.

* * * * *

4757. Book Processing

(a) Orders on the Nasdaq Book shall be presented for execution against incoming Orders in the order set forth below:

(1) Price/Display/Time Execution Algorithm. The System shall present Orders on the Nasdaq Book for execution against incoming Order in accordance with a price/display/time algorithm:

(A) No change.

(B) Display and Time. Equally priced Orders with a Display Attribute will be ranked in time priority. Orders with Extended Life Priority (as defined in Rule 4703(m)) have priority in the Nasdaq Book above other Orders resting on the Nasdaq Book at the same price that are not designated Extended Life Priority.

(C) – (D) No change.

(2) – (4) No change.

(b) – (c) No change.

* * * * *