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March 3, 2017

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

RE: Release No. 34-79428; File No. SR-NASDAQ-2016-161–Extended Life Priority Order Attribute

Dear Mr. Fields:

Themis Trading appreciates the opportunity to comment for a second time on the above referenced proposed rule changes in which the Nasdaq Stock Market proposes to adopt a new Extended Life Priority Order Attribute. Specifically, we would like to respond to Nasdaq's letter dated February 17, 2017 where Nasdaq responded to several comment letters and proposed some amendments to their original proposal.

We believe that Nasdaq's amendments and clarifications do not sufficiently address ours and other commenters concerns and therefore continue to believe that the SEC should reject Nasdaq's Extended Life Priority Order (ELO) proposal.

Nasdaq summarized the concerns from the commenters into five categories: (1) fairness of the Proposal; (2) the nature and enforcement of ELO eligibility metrics; (3) adequacy of the "retail" definition; **(4) information leakage;** and (5) the need for the Proposal. Our primary concern with Nasdaq's ELO order is information leakage. We detailed this in our December 19, 2016 SEC comment letter:

> "In return for giving retail orders queue position, Nasdaq will require that these orders be marked as extended life orders. This identifier will be disseminated to customers who purchase a proprietary data feed from Nasdaq. In other words, **ELO orders will easily be identified** by high frequency traders since they are the ones who most commonly purchase the data feeds. Knowing which orders in the queue that will not be cancelled or revised for at least one second and knowing that these are retail orders are extremely valuable pieces of information for a high frequency trader."

In their letter, Nasdaq conceded that information leakage is a concern:

> "**Nasdaq agrees that information leakage is a concern for some market participants** and that it may be an issue if ELO were applied in its current form to non-retail market participants' orders. Nasdaq does not believe, however, that information leakage is a concern with respect to the Proposal because ELO is available only to retail orders...Retail investor interest is most often represented with one order at a single price and, as such, information leakage is not a concern. "

Nasdaq appears to be saying that it's ok for them to leak information about retail order flow because those orders are small and do not usually represent an investor who is looking to build a position. This stance ignores the fact that if an order is identified as retail then it must not be institutional. In their comment letter, Citadel commented on the issue and said that by deduction, "market participants would be able to identify the presence of other quotes as either coming from institutional or professional market makers".

Nasdaq somehow tries to say that this information leakage actually makes the market more transparent:

> "Because the data is available to so many market participants, Nasdaq believes the transparency that will be provided to the industry will be a valuable way for the efficacy of the program to be evaluated. **Last, Nasdaq notes that identification of retail orders in data feeds occurs today**.[18] "

Is Nasdaq is trying to justify their information leakage by saying that a competitor is already doing the same thing? Which competitor is Nasdaq referring to? Footnote 18 states that the competitor is BATS:

> *18 See, e.g., BZX Rule 11.25(e) and EDGX Rule 11.21(e). See also US Equities/Options Multicast Depth of Book (PITCH) Specification at p. 22 ("ParticipantID"), available at http://cdn.batstrading.com/resources/membership/BATS_US_EQUITIES_OPTIONS_MULTICAST_ PITCH_SPECIFICATION.pdf.*

Nasdaq is referring to the BATS/EDGX Retail Attribution Order Type (RTAL) which we have written about several times as an order type which leaks information:

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ParticipantID	36	4	Alphanumeric	*Optionally specified.* If specified, MPID (equities) or Executing Broker (options) of firm attributed to this quote. Alternatively "RTAL" for retail specified orders (equities). Space filled otherwise.

Information leakage from an exchange should not be tolerated and certainly should not be sanctioned by the SEC. **Not only should the SEC reject Nasdaq's ELO proposal, but they should go back and review the Retail Attribution identifier that BATS is disseminating and the SEC approved.** Why is BATS identifying retail orders in their data feeds? Why does BATS pay an enhanced rebate of up to $0.0034/share to retail brokers who agree to allow BATS to tag their orders with the "RTAL" flag? Thank you Nasdaq for pointing out the fact that BATS is leaking information.

Finally, the SEC should ask Nasdaq if they plan to offer an enhanced rebate to retail brokers who use the ELO order type. If Nasdaq follows the BATS playbook, then they will most likely be offering a rebate in excess of 30 mills to encourage retail brokers to use their new ELO order type. As we have seen in the past, retail brokers will often sacrifice information about their clients to obtain more payment for order flow. Are their clients properly informed about this information leakage? Do their clients realize that their broker has accepted a larger payment from an exchange as a reward for leaking information?

Nasdaq has failed to properly explain why they should be allowed to leak information about a client's order flow. While Nasdaq's ELO order type may actually benefit some retail orders since it does gain queue priority, the negative effects of information leakage far outweigh any retail benefit. Therefore, we believe that the SEC should reject Nasdaq's Extended Life Priority Order Attribute.

Sincerely,

Joseph Saluzzi and Sal Arnuk

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