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March 30, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Nasdaq Extended Life Priority Order Attribute under Rule 4703
Release No. 34-80149; File Number SR-NASDAQ-2016-161

Dear Mr. Fields:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to further comment on the proposal by the Nasdaq Stock Market, LLC (“Nasdaq”) to introduce a new priority for displayed orders, the Extended Life Priority Order Attribute (“ELO”) (the “Proposal”).² For the reasons identified in our December 23, 2016 comment letter³ and briefly recapped again herein, we respectfully urge the Securities and Exchange Commission (the “Commission”) to reject the Proposal.

Overview

While we continue to be concerned with inequitable discrimination among market participants, our chief concerns lie with the impact of the ELO on the spiraling complexity

¹ FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS (see <https://ptg.fia.org/keywords/equity-market-structure>).

² Exchange Act Release 79428 (Nov. 30, 2016), available at <https://www.sec.gov/rules/sro/nasdaq/2016/34-79428.pdf>.

³ <https://www.sec.gov/comments/sr-nasdaq-2016-161/nasdaq2016161-1440973-129989.pdf>

of U.S. equity market structure and the negative impact this Proposal would have on displayed liquidity.

While this Proposal differs from those put forth by IEX, CHX and NYSE MKT in that it does not introduce a speed bump applicable to all participants, it does allow certain preferred participants to “jump-in-line” ahead of orders previously placed in Nasdaq’s order book. Like a speed bump, this revised priority system negatively impacts the critical price discovery and formation functions of the exchange. We fear that rather than benefitting investors, Nasdaq’s ELO would reduce incentives for price discovery and price formation to the direct detriment of all market participants.

Nasdaq Response

We appreciate Nasdaq responding to our concerns in their February 17, 2017 letter⁴ (“Nasdaq Response”). We were particularly pleased to see the amended filing shortening the review period from quarterly to monthly, the additional detail as to how the qualification requirements will operate and the plan to develop new surveillance tools to detect potential misuse of the order attribute. However, we remain concerned about the retail definition and potential for “gaming” the system. Furthermore, we still believe the ELO will negatively impact price discovery and found little comfort in Nasdaq’s response that if they are wrong, “[t]here are twelve other exchanges, over thirty registered alternative trading systems, and many other non-registered off-exchange trading platforms that a participant may elect to use if the execution quality on Nasdaq suffers due to the ELO Attribute.”⁵

Need for Holistic Reform

We strongly support action by the Commission to address the fundamental complexity in market structure instead of taking a piecemeal approach reactive to individual exchange proposals. In 2015, FIA PTG published a brief set of recommendations for simplifying U.S. equity market structure.⁶ These recommendations included the elimination of the requirement to avoid displaying locked and crossed markets (Rule 610.d) and the elimination of the order protection rule (Rule 611). Both of these rules were originally put in place, in part, to help ensure that brokers were achieving best execution for their clients. Today we believe that best execution can be addressed much more simply by clarifying and modernizing the best execution requirements that brokers already have, rather than by sustaining this extremely complex backstop managed by the trading venues.

⁴ <https://www.sec.gov/comments/sr-nasdaq-2016-161/nasdaq2016161-1590244-132170.pdf>

⁵ See Nasdaq Response at 3.

⁶ See FIA PTG, *Simplifying U.S. Equity Market Structure* (January 28, 2015), at http://ptg.fia.org/sites/default/files/content_attachments/FIA%20PTG%20Position%20-%20Simplifying%20US%20Equity%20Market%20Structure.pdf

Eliminate Rules 610.d and 611

While we continue to be strong proponents of a holistic review of Regulation NMS, we understand that this review will take time. In the interim, we believe the elimination of both Rules 610.d and 611, along with the modernization of the best execution requirements, would simplify the markets in meaningful ways and provide other important benefits for the investing public.

Conclusion

The Nasdaq ELO would transform what is currently a deterministic and predictable order priority regime into one that is much less transparent and predictable. Providing queue priority to one class of market participants and not others is not only discriminatory, but could materially disrupt the critical price discovery and liquidity functions performed by our markets—to the detriment of all participants.

FIA PTG supports innovation and recognizes the value in considering whether new approaches can further improve favorable conditions. However, the benefits of this innovation would not outweigh the cost of added complexity and reduced price discovery.

For these reasons, we again respectfully urge the Commission to reject this Proposal.

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Joanna Mallers [REDACTED]).

Respectfully,

FIA Principal Traders Group



Joanna Mallers
Secretary

cc: Michael S. Piwowar, Acting Chairman
Kara M. Stein, Commissioner