SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82825; File No. SR-NASDAQ-2017-074)

March 7, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Adopt the Midpoint Extended Life Order

I. Introduction

On July 21, 2017, The Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt the Midpoint Extended Life Order ("MELO"). The proposed rule change was published for comment in the Federal Register on August 9, 2017.[3] On August 9, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On September 21, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] The Commission initially received

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 81311 (August 3, 2017), 82 FR 37248 ("Notice").

4 In Amendment No. 1, the Exchange updated the proposal to reflect the approval of the proposal by the Exchange's Board of Directors on July 21, 2017. Amendment No. 1 is available at https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm. Because Amendment No. 1 is a technical amendment that does not alter the substance of the proposed rule change, it is not subject to notice and comment.

5 15 U.S.C. 78s(b)(2).

6 See Securities Exchange Act Release No. 81668, 82 FR 45095 (September 27, 2017). The Commission designated November 7, 2017 as the date by which the Commission

three comment letters on the proposed rule change.[7] On October 30, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[8] On November 3, 2017, the Commission published notice of Amendment No. 2 and instituted proceedings under Section 19(b)(2)(B) of the Act[9] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2.[10] The Commission received one additional comment letter on the proposed rule change in response to the Order Instituting Proceedings.[11] On February 5, 2018, pursuant to Section 19(b)(2) of the Act,[12] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[13] On February 22,

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shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

7 See Letters to Brent J. Fields, Secretary, Commission, from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel Securities, dated August 30, 2017 ("Citadel Letter"); Ray Ross, Chief Technology Officer, The Clearpool Group, dated September 12, 2017 ("Clearpool Letter"); and Joanna Mallers, Secretary, FIA Principal Traders Group, dated September 19, 2017 ("FIA PTG Letter").

8 In Amendment No. 2, the Exchange: (1) modified the proposal to prevent MELOs from executing when there is a non-displayed order priced more aggressively than the NBBO midpoint resting on the Nasdaq book; (2) provided additional description, clarification, and rationale for certain aspects of the proposal; and (3) responded to several concerns raised by commenters on the proposal. Amendment No. 2 is available at https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm.

9 15 U.S.C. 78s(b)(2)(B).

10 See Securities Exchange Act Release No. 82013, 82 FR 52075 (November 9, 2017) ("Order Instituting Proceedings").

11 See Letter to Brent J. Fields, Secretary, Commission, from Edward K. Shin, dated December 8, 2017 ("Shin Letter").

12 15 U.S.C. 78s(b)(2).

13 See Securities Exchange Act Release No. 82629, 83 FR 5822 (February 9, 2018). The Commission designated March 7, 2018 as the date by which the Commission shall either approve or disapprove the proposed rule change.

2018, the Exchange filed Amendment No. 3 to the proposed rule change.[14] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal

The Exchange proposed to offer the MELO order type. A MELO would be a non-displayed order priced at the midpoint between the National Best Bid and Offer ("NBBO") and would not be eligible to execute until a minimum period of one half of a second ("Holding Period") has passed after acceptance of the order by the system.[15] Once eligible to trade, MELOs would be ranked in time priority at the NBBO midpoint among other MELOs.[16] If a limit price is assigned to a MELO, the order would be: (1) eligible for execution in time priority after satisfying the Holding Period if upon acceptance of the order by the system, the midpoint price is within the limit set by the participant; or (2) held until the midpoint falls within the limit

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14 In Amendment No. 3, the Exchange proposed to publish weekly aggregated statistics showing the number of shares and transactions of MELOs executed on the Exchange by security. This information would be published on Nasdaqtrader.com with a two-week delay for MELO executions in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility ("LULD Plan") and a four-week delay for MELO executions in all other NMS stocks. The Exchange also proposed to publish monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on the Exchange. This information would be published on Nasdaqtrader.com no earlier than one month following the end of the month for which trading was aggregated. Amendment No. 3 is available at https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074.htm.

15 See proposed Nasdaq Rule 4702(b)(14)(A).

16 See id.

set by the participant, at which time the Holding Period would commence and thereafter the system would make the order eligible for execution in time priority.[17]

If a MELO is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) during the Holding Period, the system would restart the Holding Period.[18] Similarly, if a MELO is modified by a member (other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt) after it has become eligible to execute, the order would have to satisfy a new Holding Period.[19]

Movements in the NBBO while a MELO is in the Holding Period would not reset the Holding Period, even if, as a result of the NBBO move, the MELO's limit price is less aggressive than the NBBO midpoint.[20] Also, if a MELO has met the Holding Period, but the NBBO midpoint is no longer within its limit, it would nonetheless be ranked in time priority among other MELOs if the NBBO later moves such that the midpoint is within the order's limit price (i.e., no new Holding Period).[21]

MELOs may be entered via any of the Exchange's communications protocols and the type of communications protocol used would not affect how the system handles MELOs.[22] If there is no NBB or NBO, the Exchange would accept MELOs but would not allow MELO

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17 See id.

18 See id. The Exchange noted that any change to a MELO that would result in a change in the order's timestamp would result in the MELO being considered altered, and thus the order would be subject to a new Holding Period before being eligible to trade and its priority would be based on the new timestamp. See Amendment No. 2 at n.16.

19 See proposed Nasdaq Rule 4702(b)(14)(A).

20 See Amendment No. 2 at n.11.

21 See proposed Nasdaq Rule 4702(b)(14)(A); Amendment No. 2 at n.15.

22 See Amendment No. 2 at n.10.

executions until there is an NBBO.[23] MELOs would be eligible to trade if the NBBO is locked.[24] If the NBBO is crossed, MELOs would be held by the system until such time that the NBBO is no longer crossed, at which time they would be eligible to trade.[25] MELOs may be cancelled at any time, including during the Holding Period.[26]

MELOs would be active only during Market Hours.[27] MELOs entered during Pre-Market Hours would be held by the system in time priority until Market Hours.[28] MELOs entered during Post-Market Hours would not be accepted by the system, and MELOs remaining unexecuted after 4:00 p.m. ET would be cancelled by the system.[29] MELOs would not be eligible for the Nasdaq opening, halt, and closing crosses.[30]

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23 See id. at 12. If there is no NBB or NBO upon entry of a MELO, the system would hold the order in time priority, together with any other MELOs received while there is no NBB or NBO. See id. Once there is an NBBO, the Holding Period would begin for the held MELOs based on time priority. See id.

24 See id. at 12-13.

25 See id. at 13.

26 See proposed Nasdaq Rule 4702(b)(14)(A).

27 See proposed Nasdaq Rule 4702(b)(14)(B). Market Hours begin after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs). See Nasdaq Rule 4703(a).

28 See proposed Nasdaq Rule 4702(b)(14)(B). "Pre-Market Hours" means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. See Nasdaq Rule 4701(g). A MELO entered during Pre-Market Hours would be held by the system until the completion of the Opening Cross (or 9:30 a.m. ET if no Opening Cross occurs), ranked in the time that it was received by the Nasdaq book upon satisfaction of the Holding Period. See Amendment No. 2 at 11-12.

29 See proposed Nasdaq Rule 4702(b)(14)(B). "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. See Nasdaq Rule 4701(g)

30 See proposed Nasdaq Rule 4703(l); Amendment No. 2 at 12. MELOs in existence at the time a halt is initiated would be ineligible to execute and held by the system until trading has resumed and the NBBO has been received by Nasdaq. See proposed Nasdaq Rule 4702(b)(14)(A).

MELOs must be entered with a size of at least one round lot, and any shares of a MELO remaining after an execution that are less than one round lot would be cancelled.[31] MELOs may have a minimum quantity order attribute.[32] MELOs may not be designated with a time-in-force of immediate or cancel ("IOC") and are ineligible for routing.[33] They also may not have the discretion, reserve size, attribution, intermarket sweep order, display, or trade now order attributes.[34]

Once a MELO becomes eligible to execute by existing unchanged for the Holding Period, the MELO may only execute against other eligible MELOs.[35] MELOs would not execute if there is a resting non-displayed order priced more aggressively than the NBBO midpoint, and they instead would be held until the resting non-displayed order is no longer on the Nasdaq book or the NBBO midpoint matches the price of the resting non-displayed order.[36] MELO executions would be reported to Securities Information Processors and provided in Nasdaq's proprietary data feed without any new or special indication.[37] The Exchange would, however, publish delayed weekly aggregated statistics, as well as delayed monthly aggregated block-sized trading statistics, for MELO executions.[38] Specifically, the Exchange would publish on Nasdaqtrader.com weekly aggregated statistics showing the number of shares and transactions of

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31 See proposed Nasdaq Rule 4702(b)(14)(B).

32 See id.

33 See id.; Amendment No. 2 at 11 and 13.

34 See Amendment No. 2 at 13-14.

35 See proposed Nasdaq Rule 4702(b)(14)(A).

36 See id.; Amendment No. 2 at 9.

37 See Amendment No. 2 at 15.

38 See proposed Nasdaq Rule 4702(b)(14)(A); Amendment No. 3 at 3-6.

MELOs executed on Nasdaq by security.[39] This information would be published with a two-week delay for NMS stocks in Tier 1 of the LULD Plan, and a four-week delay for all other NMS stocks.[40] The Exchange also would publish on Nasdaqtrader.com monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on Nasdaq.[41] This information would be published no earlier than one month following the end of the month for which trading was aggregated.[42] Under the proposal, a transaction would be considered "block-sized" if it meets any of the following criteria: (1) 10,000 or more shares; (2) $200,000 or more in value; (3) 10,000 or more shares and $200,000 or more in value; (4) 2,000 to 9,999 shares; (5) $100,000 to $199,999 in value; or (6) 2,000 to 9,999 shares and $100,000 to $199,999 in value.[43]

As proposed, MELOs would be subject to real-time surveillance to determine if the order type is being abused by market participants.[44] In addition, the Exchange intends to implement a process, at the same time as the implementation of MELOs, to monitor the use of MELOs with the intent to apply additional measures, as necessary, to ensure their usage is appropriately tied to the intent of the order type.[45] The Exchange stated that this process may include metrics tied to participant behavior, such as the percentage of MELOs that are cancelled prior to the completion of the Holding Period, the average duration of MELOs, and the percentage of MELOs where the

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39 See proposed Nasdaq Rule 4702(b)(14)(A).

40 See id.

41 See id.

42 See id.

43 See id.

44 See Amendment No. 2 at 22.

45 See id.

NBBO midpoint is within the limit price when received.[46] The Exchange stated that it is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior.[47] According to the Exchange, manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of the MELO order type may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[48]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[49] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[50] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and that the rules are not designed to permit unfair discrimination between customers,

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46 See id.

47 See id. at 22-23.

48 See id. at 23.

49 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

50 15 U.S.C. 78f(b)(5).

issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[51] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has carefully considered the MELO order type and finds that it is consistent with the Act. The Commission believes that the MELO order type could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.

As noted above, the Commission received four comment letters on the proposed rule change.[52] One commenter supported the proposed rule change, stating that MELOs could provide a valuable tool for investors (particularly institutional investors) seeking to execute in large size to effectively implement their investment strategies on an exchange and could attract longer-term market participants to Nasdaq.[53] This commenter also stated the benefits to investors of trading MELOs on an exchange as compared to off-exchange trading venues.[54] In particular, the commenter noted that trading on an exchange is open to all participants, and is a far fairer, more transparent way for markets to operate in contrast to off-exchange trading venues.[55]

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51 15 U.S.C. 78f(b)(8).

52 See supra notes 7 and 11.

53 See Clearpool Letter at 1-3.

54 See id. at 2.

55 See id.

Two commenters expressed the concern that MELOs would create a separate order book within the Nasdaq matching system where only MELOs could interact with each other.[56] One of these commenters stated that the proposal represents an unprecedented level of exchange-based order flow segmentation.[57] This commenter acknowledged the existence of limited exchange-based mechanisms that have the effect of restricting some order flow interaction, but contended that the proposal goes significantly beyond any such existing restrictions.[58] The other commenter also asserted that artificially introducing latency negatively impacts the price discovery and formation functions of the Exchange.[59]

In addition, one commenter remarked that market participants with marketable held orders or resting orders seeking to execute against marketable held order flow would be unlikely to utilize MELOs because marketable held orders are typically required to be executed fully and promptly.[60] According to the commenter, as use of the MELO order book increases, liquidity in the non-MELO order book could be negatively impacted to the detriment of retail investors.[61] In addition, the commenter stated that investors submitting resting MELOs would not be able to interact with marketable held order flow.[62] The commenter suggested that the Exchange could partially mitigate the negative impacts of MELO order segmentation by revising its proposal to

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56 See Citadel Letter at 1-3; FIA PTG Letter at 2.

57 See Citadel Letter at 1. This commenter noted that the proposal would result in two orders on the Exchange failing to interact when one order is a MELO and the other order is not. See id. at 3.

58 See id.

59 See FIA PTG Letter at 2.

60 See Citadel Letter at 1-2.

61 See id. at 2.

62 See id.

allow any order to immediately interact with a resting MELO as long as it is priced beyond the midpoint.[63]

In contrast, one commenter stated that allowing MELOs to interact with non-MELOs would defeat the purpose of the MELO order type.[64] This commenter also stated that it does not believe that the proposal would negatively impact liquidity or price discovery on the Nasdaq market because the MELO order type should have little to no detrimental effect on participants using other order types.[65] According to this commenter, to the extent that the MELO order type would provide incentives for order flow to be directed to a fair access exchange and away from private market centers, price discovery for the broader markets might improve.[66]

The Exchange responded to these comments in Amendment No. 2, and stated that although MELOs may forgo the opportunity to interact with other liquidity on the Exchange, MELO users will have accepted this possibility in return for the ability to interact with other market participants with the same time horizon.[67] The Exchange also compared MELOs to the minimum quantity order attribute, as well as the retail price improving orders available on Nasdaq BX, Inc.[68] The Exchange stated that both of these types of orders provide the opportunity to interact with orders meeting certain characteristics, and consequently may miss the opportunity to receive an execution if the contra-side order does not meet the specified

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63 See id.

64 See Clearpool Letter at 3.

65 See id.

66 See id.

67 See Amendment No. 2 at 19.

68 See id.

characteristics.[69] The Exchange also stated that it is not unfair or discriminatory that non-displayed orders resting on Nasdaq that are priced more aggressively than the NBBO midpoint would not participate in MELO executions.[70] According to the Exchange, the use of resting non-displayed orders and MELOs would be available to all Exchange participants, who need to evaluate which order type best serves their investment needs.[71] The Exchange also noted that it conducted a pro forma study of the effect of applying MELOs to the current market by reviewing all executions occurring on Nasdaq in August 2017, and found that only 0.37% of resting non-displayed orders traded at a price better than the prevailing midpoint at the time of execution.[72] According to the Exchange, consequently, the number of situations in which a participant would have to consider the trade-offs between posting a non-displayed buy (sell) order at a higher (lower) price as compared to submitting a MELO is minimal.[73] In addition, the Exchange reiterated that all members may use MELOs and thus have access to MELO liquidity.[74] Finally, the Exchange amended the proposal to provide that MELOs would not execute if there is a resting non-displayed order priced more aggressively than the NBBO midpoint; rather, MELOs would be held until the resting non-displayed order is no longer on the Nasdaq book or the NBBO midpoint matches the price of the resting non-displayed order.[75]

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69 See id.

70 See id. at 20.

71 See id.

72 See id. at 21.

73 See id.

74 See id.

75 See id. at 9; proposed Nasdaq Rule 4702(b)(14)(A).

The Commission believes that the proposed MELO order type is reasonably designed to enhance midpoint execution quality on the Exchange. The Commission notes that the concept of exchange order types or attributes that permit market participants to elect not to execute against certain contra-side interest is not novel. Existing order functionalities, such as the minimum quantity and post-only conditions, enable market participants to direct their orders to execute only if certain conditions are met by contra-side order flow. The Commission also notes that the Holding Period introduced by the Exchange's proposal is specific to MELOs and thus does not introduce latency with respect to any other type of trading interest on the Exchange. Moreover, as noted above, the MELO order type (including its Holding Period) could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons. In addition, the Commission notes that, unlike a scenario in which orders are directed among multiple separate trading venues where price priority might not be available among the orders, the Exchange's proposal would ensure that a MELO does not execute at a price that is inferior to the price of a resting non-displayed order (i.e., a resting order priced more aggressively than the NBBO midpoint). Finally, the Commission notes that all Nasdaq members may utilize MELOs if they so choose. Accordingly, the Commission believes that the Exchange's proposal represents a reasonable effort to enhance the ability of longer-term trading interest to participate effectively on an exchange, without discriminating unfairly against other market participants or inappropriately or unnecessarily burdening competition.

One commenter raised the concern that, under the proposal, MELO executions would be reported to the Securities Information Processors and provided on Nasdaq's proprietary data feed in the same manner as all other transactions on Nasdaq.[76] This commenter stated that this approach likely would raise concerns about market fairness and introduce significant complexity for investors, broker-dealers, and regulators when attempting to analyze market activity and assess execution quality.[77] This commenter noted, by way of example, that investors may see their orders executed on Nasdaq at worse prices than other contemporaneous executions on Nasdaq and that, without Nasdaq labeling MELO executions as such, investors may not know why this has occurred.[78] This commenter also asserted that, without labeling MELO executions differently than other executions on Nasdaq, broker-dealer routing logic may be influenced by liquidity that is not actually accessible, and regulators may experience difficulties in accurately filtering market data when evaluating compliance with regulatory requirements such as best execution.[79] This commenter urged the Commission to require that executions resulting from MELOs be marked as such on the tape.[80]

By contrast, one commenter stated that it does not believe that the lack of specific identification of MELOs in trade reports would result in any difficulties for the markets, or complexity for investors or other market participants when assessing execution quality.[81] According to this commenter, MELO users would be provided with anonymity and confidentiality, which the commenter asserted are critical tools in preventing potentially predatory counterparties from determining intention and using that information to generate short-

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[76] See Citadel Letter at 3.

[77] See id.

[78] See id.

[79] See id.

[80] See id. Alternatively, the commenter suggested that Nasdaq offer the MELO order type on a separate exchange. See id.

[81] See Clearpool Letter at 2.

term profits at the expense of longer-term investors.[82] In addition, this commenter stated that exchanges currently offer many order types that when executed do not indicate exactly which order types were used.[83]

The Exchange responded to these comments in Amendment No. 2, and noted that transactions in MELOs would be reported to the Securities Information Processors and provided in Nasdaq's proprietary data feed in the same manner as all other transactions occurring on Nasdaq are done currently (i.e., without any new or special indication that a transaction is a MELO execution).[84] According to the Exchange, not identifying MELO executions in real-time is important to ensuring that investors are protected from market participants that would otherwise take advantage of the knowledge of MELO executions and undermine the usefulness of the order type.[85] In particular, according to the Exchange, MELO is designed to increase access to, and participation on, Nasdaq for investors that are less concerned with the time to execution, but rather are looking to source liquidity, often in greater size, at the NBBO midpoint against a counterparty order that has the same objectives.[86] The Exchange noted that the proposal is designed to help ensure that members with MELOs are not disadvantaged by other order types entered by participants that have the benefit of knowing, and reacting to, rapid changes in the market.[87] Moreover, in Amendment No. 3, the Exchange proposed to publish delayed execution volume statistics for MELOs. As discussed above, the Exchange proposed to

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82 See id.

83 See id.

84 See Amendment No. 2 at 25.

85 See id.

86 See id. at 17.

87 See id. at 9.

publish weekly aggregated volume statistics regarding the number of shares and transactions of MELOs executed on the Exchange by security, as well as monthly aggregated block-sized trading statistics of total shares and total transactions of MELOs executed on the Exchange.[88] The weekly aggregated information would be published on Nasdaqtrader.com with a two-week delay for NMS stocks in Tier 1 of the LULD Plan and a four-week delay for all other NMS stocks.[89] The monthly aggregated information would be published on Nasdaqtrader.com no earlier than one month following the end of the month for which trading was aggregated.[90]

The Commission notes that the proposed MELO order type is intended to provide additional execution opportunities on the Exchange for market participants that may not be as sensitive to very short-term changes in the NBBO and are willing to wait a prescribed period of time following their order submission to receive a potential execution against other market participants that have similarly elected to forgo an immediate execution. In particular, the proposed MELO order type is intended to mitigate the risk that an opportunistic low-latency trader will be able to execute against a member's order at a time that is disadvantageous to the member, such as just prior to a change in the NBBO. The Commission also believes that the proposal to publish delayed aggregated statistics for MELO executions is reasonably designed to provide transparency regarding MELO executions on the Exchange without undermining the usefulness of the order type by limiting the potential information leakage and the resulting market impact that could be associated with non-delayed identification of individual MELO executions.

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88 See proposed Nasdaq Rule 4702(b)(14)(A).

89 See id.

90 See id.

One commenter asserted that allowing MELOs to be cancelled at any time during the Holding Period does not appear to be consistent with the intended use of the order type.[91] Instead, according to this commenter, a MELO should only be permitted to be cancelled after the Holding Period has expired and the order has been placed in the order book.[92] Another commenter expressed concern that high-frequency traders and algorithms could take advantage of MELOs.[93] By contrast, one commenter did not have an issue with providing market participants the ability to cancel MELOs during the Holding Period.[94] This commenter stated that it believes this would be an important feature of the MELO order type because many firms use algorithms to source liquidity simultaneously from multiple venues.[95] According to the commenter, to the extent that liquidity is found elsewhere than Nasdaq within the Holding Period, it would be critically important that the firm be able to cancel its orders from Nasdaq and re-allocate those shares to other venues.[96] This commenter stated that it does not believe any market participants would be harmed in such a circumstance.[97]

In Amendment No. 2, the Exchange responded that MELOs may be cancelled at any time, including during the Holding Period, to allow members to effectively manage risk.[98] The Exchange also acknowledged that the potential exists for some participants to use MELOs in a way that conflicts with the stated intention of the order type to allow longer term investors the

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91 See Citadel Letter at 4.

92 See id.

93 See Shin Letter.

94 See Clearpool Letter at 3.

95 See id.

96 See id.

97 See id.

98 See Amendment No. 2 at 8.

opportunity to safely find like-minded counterparties at the midpoint on Nasdaq.[99] For this reason, the Exchange represented that MELOs would be subject to real-time surveillance to determine if the order type is being abused by market participants.[100] The Exchange also stated that it plans to implement a process, at the same time as the implementation of MELOs, to monitor the use of MELOs, with the intent to apply additional measures, as necessary, to ensure that their usage is appropriately tied to the intent of the order type.[101] According to the Exchange, this process may include metrics tied to participant behavior, such as the percentage of MELOs cancelled prior to completion of the Holding Period, the average duration of MELOs, and the percentage of MELOs where the NBBO midpoint is within the limit price when received.[102] The Exchange stated that manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that frustrates the purposes of the MELO order type may be subject to penalties or other requirements to discourage such behavior, should it occur.[103]

The Commission believes that the Exchange's proposed measures are reasonably designed to deter potential improper use of the proposed MELO order type. In particular, the Commission notes that the Exchange has represented that it will conduct real-time surveillance to monitor the use of MELOs and ensure that such usage is appropriately tied to the intent of the order type.[104] Moreover, importantly, the Exchange will measure the metrics noted above that

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[99] See id. at 22.

[100] See id.

[101] See id.

[102] See id.

[103] See id. at 23.

[104] See id. at 22-23.

reflect participant behavior with respect to MELOs, such as the percentage of a participant's MELOs that are cancelled prior to the completion of the Holding Period.[105] As the Exchange represented in its filing, the Commission expects the Exchange to continue to evaluate whether additional measures may be necessary to ensure that MELOs are used in a manner consistent with the intended purpose of the order type.[106]

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 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-2017-074 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2017-074. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the

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105 See id. at 22.

106 See id.

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-074, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the Federal Register. As discussed above, in Amendment No. 3, the Exchange proposed to provide on Nasdaqtrader.com certain delayed aggregated volume statistics for MELOs executed on the Exchange. The Commission notes that Amendment No. 3 is designed to provide transparency regarding MELO executions on the Exchange. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[107] to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

[107] 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[108] that the proposed rule change (SR-NASDAQ-2017-074), as modified by Amendment Nos. 1, 2, and 3 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

Brent J. Fields
Secretary

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108 Id.

109 17 CFR 200.30-3(a)(12).