

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84924; File No. SR-NASDAQ-2018-106)

December 21, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Extended Life Priority Order Attribute

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 December 19, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 eliminate the Extended Life Priority Order Attribute, which has not been implemented to date.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 to eliminate the Extended Life Priority Order Attribute, which was approved by the Commission³ but has not been implemented.⁴ The Extended Life Priority Order Attribute⁵ would allow certain displayed retail Orders to receive higher priority on the Nasdaq Book than other Orders at the same price. 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. Thus, the Extended Life Priority Order Attribute would incentivize members to provide market-improving behavior on the Exchange in the form of longer-lived displayed retail Orders.

³ See Securities Exchange Act Release No. 81097 (July 7, 2017), 82 FR 32386 (July 13, 2017) (SR-NASDAQ-2016-161).

⁴ See Securities Exchange Act Release No. 81855 (October 11, 2017), 82 FR 48301 (October 17, 2017) (SR-NASDAQ-2017-103).

⁵ 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. 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. 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. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. See Rule 4701(e).

The Commission approved Extended Life Priority Order Attribute on July 7, 2017. The Exchange anticipated a progressive rollout of the Extended Life Priority Order Attribute functionality, beginning with a small set of symbols and gradually expanding further. Specifically, the Exchange planned to implement the initial set of symbols eligible for the Extended Life Priority Order Attribute in the third quarter of 2017, with the exact implementation date being reliant on several factors, such as the results of extensive testing and industry events and initiatives. In September 2017, the Exchange determined to delay implementation of the Extended Life Priority Order Attribute until the second half of 2018, noting that it had encountered unforeseen issues in developing the new Order Attribute.

The Exchange notes that significant changes to market structure have been proposed since it first proposed the new Order Attribute, including the proposal of a Transaction Fee Pilot.⁶ The Exchange has concerns with potential impact to market quality with regards to these proposals, which have introduced uncertainty and potential risk to the Exchange in implementing the Extended Life Priority Order Attribute. For example, the Transaction Fee Pilot, if approved, would reduce the level of fees the Exchange may charge for transactions and, in turn, reduce the incentives that it can provide to liquidity providers. As noted above, the Extended Life Priority Order Attribute would allow certain Orders to receive higher priority on the Nasdaq Book than other Orders at the same price that, coupled with a reduction in incentive to liquidity providers, may reduce the liquidity available on the Exchange and consequently impact market quality. The Exchange believes it is prudent to eliminate the unimplemented Order Attribute at this time, pending clarity on the large market structure changes being proposed, including the Transaction Fee Pilot. The Exchange believes that, since it does not have an intent to implement the Order

⁶ See Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18).

Attribute at this time, it is appropriate to remove it from the Exchange's rules to avoid any confusion that may be caused by having an approved yet unimplemented rule. Once there is clarity on the proposed market structure changes, if the Exchange determines the Extended Life Priority Order Attribute would add value to the market and may be implemented without significant risk of decreased liquidity on the market, it will re-propose the Order Attribute

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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, by eliminating an Order Attribute that has been approved by the Commission but not yet implemented. The Exchange believes that it is in the public interest to avoid any confusion that may be caused by having an approved yet unimplemented rule that the Exchange does not plan to implement at this time. Moreover, the Exchange believes that implementation of the Extended Life Priority Order Attribute at this time may negatively affect market quality given the large market structure changes being proposed, as discussed above.

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

The Exchange 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. The proposed elimination of the unimplemented Extended Life Priority Order Attribute is being done because implementation of the Order Attribute would potentially result in decreased liquidity on the Exchange. The Exchange has weighed the risk of implementing the Order Attribute at this time

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

in light of current uncertainty surrounding the large market structure changes being proposed, including the significant risk of decreased liquidity that may be caused by the proposed Transaction Fee Pilot coupled with the possible negative impact on liquidity provider behavior caused by losing priority to Orders with the Extended Life Priority Order Attribute, and has determined that implementing the Order Attribute at this time may impact its market negatively. Accordingly, the Exchange is eliminating the Extended Life Priority Order Attribute to ensure that it remains competitive with other markets.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may avoid any investor confusion over the implementation of the Extended Life Priority Order Attribute. In particular, the Exchange previously indicated that the Extended Life Priority Order Attribute would be implemented in the second half of 2018 but has since determined not to implement the Order Attribute at this time. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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

¹³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-106 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-2018-106. 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 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-2018-106 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.¹⁴

Brent J. Fields
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).