

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 006

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input 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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule	
			<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 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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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 *).

A proposed rule change to enable exchange members to enter Midpoint Extended Life Orders and M-ELO Plus Continuous Book Orders with an immediate-or-cancel time-in-force instruction

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 * Brett Last Name * Kitt

Title * AVP Principal Associate General Counsel

E-mail * Brett.kitt@nasdaq.com

Telephone * (301) 978-8132 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 01/19/2022 (Title *)

By John Zecca (Name *) EVP and Chief Legal Officer

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

 Date: 2022.01.19 13:33:50 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2022-006 19b-4.doc

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

SR-NASDAQ-2022-006 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

SR-NASDAQ-2022-006 Exhibit 5.doc

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 amend Equity 4, Section 4702(b)(14) and (implicitly) 4702(b)(15)³ to enable Exchange members to enter Midpoint Extended Life Orders (“M-ELOs”) and M-ELO Plus Continuous Book (“M-ELO+CB”) Orders with an immediate-or-cancel (“IOC”) Time-in-Force (“TIF”) instruction.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. 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 (the “Board”) on January 18, 2022.

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

Brett Kitt
AVP, Principal Associate General Counsel
Nasdaq, Inc.
(301) 987-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Citations herein to the Nasdaq Rule 4000 Series shall refer to Equity 4.

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

a. Purpose

The Exchange proposes to amend Rule 4702(b)(14) and (by implication) 4702(b)(15) to enable Exchange members to enter M-ELO and M-ELO+CB Orders with an IOC time-in-force instruction.

On March 7, 2018, the Commission issued an order approving the Exchange’s proposal to adopt the M-ELO as a new Order Type.⁴ A M-ELO is a non-displayed order that is available to all members but interacts only with other M-ELOs and M-ELO+CBs. It is priced at the midpoint between the National Best Bid and Offer (“NBBO”) and it does not become eligible for execution until at least 10 milliseconds elapse after its entry (the “Holding Period”).⁵ Once the Holding Period elapses, a M-ELO becomes eligible for execution against other M-ELOs and M-ELO+CBs on a time-priority basis.⁶

A M-ELO+CB is an Order Type that has all the characteristics and attributes of a M-ELO Order, except that a M-ELO+CB that satisfies the Holding Period is eligible to

⁴ See Securities Exchange Act Release No. 34-82825 (Mar. 7, 2018), 83 FR 10937 (Mar. 13, 2018) (order approving SR-NASDAQ-2017-074).

⁵ In 2020, the Commission issued an order approving the Exchange’s proposal to shorten the Holding Period for M-ELO and M-ELO+CB Orders from one half second to 10 milliseconds. See Securities Exchange Act Release No. 34-88743 (April 24, 2020), 85 FR 24068 (April 30, 2020) (order approving SR-NASDAQ-2020-011). If a member modifies a MELO or M-ELO+CB during the Holding Period, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will cause the Holding Period to reset.

⁶ If a member modifies a M-ELO or M-ELO+CB after the Holding Period elapses, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will trigger a new Holding Period for the order.

execute (at the midpoint of the NBBO) against other eligible M-ELO+CBs, eligible M-ELOs, and also eligible non-displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders (“Midpoint Orders”) resting on the Exchange's Continuous Book.⁷

Presently, neither M-ELO nor M-ELO+CB Orders may be entered with a TIF of IOC. An Order with a TIF of IOC is one that is designated to deactivate immediately after determining whether the Order is marketable.⁸ In the Exchange’s proposal to establish the M-ELO Order Type, the Exchange explained that it decided to exclude IOCs from M-ELOs since it deemed the IOC TIF, by its nature, to be “inconsistent with the Holding Period requirement of the proposal.”⁹ That is, the Exchange designed M-ELO to provide a space where investors with longer time horizons, including institutional investors, can interact exclusively with each other – by virtue of a mutually-applicable Holding Period – without fear that aggressive order types could trade with M-ELOs or M-ELO+CBs to the detriment of such M-ELOs and M-ELO+CBs immediately upon entry and without waiting 10 milliseconds before doing so, such as immediately before a

⁷ A M-ELO+CB is eligible to execute against a Midpoint Order if: (i) the Midpoint Order has the Midpoint Trade Now Attribute enabled; (ii) no other order is resting on the Continuous Book that has a more aggressive price than the current midpoint of the NBBO; (iii) the Midpoint Order has rested on the Exchange's Continuous Book for a minimum of 10 milliseconds after the NBBO midpoint falls within the limit set by the participant; and (iv) the Midpoint Order satisfies any minimum quantity requirement of the M-ELO+CB. A buy (sell) M-ELO+CB is ranked in time order at the midpoint among other buy (sell) M-ELO+CBs, buy (sell) Midpoint Extended Life Orders, and buy (sell) Midpoint Orders, as of the time when such Orders become eligible to execute. See Rule 4702(a)(15); see also Securities Exchange Act Release No. 34-86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (order approving SR-NASDAQ-2019-048).

⁸ Rule 4703(a)(1).

⁹ See Securities Exchange Act Release No. 34-81311 (August 3, 2017), 82 FR 37248 (August 9, 2017) (SR-NASDAQ-2017-074).

change in the NBBO for a particular security (i.e., risk of adverse selection).

Nevertheless, brokers representing institutional investors – which again are the primary beneficiaries and users of M-ELO and M-ELO+CB – have approached the Exchange recently to request the ability to enter IOC instructions for their M-ELO and M-ELO+CB Orders as a means of assisting them in sourcing liquidity on the Exchange’s M-ELO/M-ELO+CB Book so that they can minimize the opportunity costs of utilizing M-ELO and M-ELO+CB Orders and thus render use of M-ELO and M-ELO+CB more efficient and productive for participants.

That is, the functionality would provide users with an indication as to whether eligible contra-side liquidity would be available to their M-ELO or M-ELO+CB Orders and allow these users to streamline their decision-making process of whether to send additional M-ELO or M-ELO+CB Orders to the Exchange or to seek liquidity elsewhere.¹⁰ It would also enable participants whose M-ELO or M-ELO+CB Orders do not satisfy the conditions for a Holding Period to commence upon Order entry to have those Orders cancel immediately rather than be held by the System until such time as the conditions are met, which would allow these participants to assess whether they wish to submit new M-ELO or M-ELO+CB Orders that would satisfy the conditions to commence a Holding Period upon entry.

To avoid introducing the risks of adverse selection associated with enabling IOC in these contexts (discussed above), brokers representing institutional investors requested that when they enter M-ELO and M-ELO+CB Orders (which are eligible to commence a Holding Period upon entry) with an IOC instruction, the IOC instruction should activate

¹⁰ The Exchange understands that some participants representing institutional investor orders have developed methods that mimic the functions of IOC.

only at the expiration of the 10 millisecond Holding Period, rather than immediately upon Order entry. In other words, only after the 10 millisecond Holding Period elapses would the System check to see if a M-ELO or M-ELO+CB Order with an IOC TIF is able to execute immediately against contra-side resting liquidity; if so, the Order will execute as it would currently, but if not, the System will automatically cancel the Order rather than keep it on the Book. If the Order at the time of entry is unable to begin the Holding Period (because, for example, it is entered with a limit price that is not at or better than the midpoint of the NBBO, if there is no NBB or NBO at the time of entry, or the NBBO is crossed at the time of entry), then the Order will be automatically cancelled immediately.

The Exchange agrees with the participants that requested this IOC functionality that when modified in this manner, its use with M-ELO and M-ELO+CB would serve a beneficial purpose that is not inconsistent with the Exchange's intentions and designs for these Order Types. That is, it would permit IOC users to check the M-ELO or M-ELO+CB Book for contra-side liquidity, but not in an aggressive or riskless fashion.¹¹ Users of the IOC functionality in this context would still need to endure the Holding Period before utilizing it, and then execute against contra-side interest if it is available upon expiration of that Holding Period. While the proposal would provide for immediate cancellation of M-ELO and M-ELO+CB Orders that do not meet the conditions for a Holding Period to commence upon entry, the cancellation of these M-ELOs and M-ELO+CBs would only indicate that such Orders are not eligible to enter the Holding Period (i.e., the NBBO is crossed at the time of entry, there is no NBB or NBO at the

¹¹ Nasdaq reiterates that by design, spread-crossing orders do not interact with MELO or M-ELO+CB Orders.

time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint) and would not indicate whether there are available contra-side M-ELOs or M-ELO+CBs at the time of entry on Nasdaq. The Exchange also notes that, in other contexts, the use of IOCs is routine and recognized as a prudent way to seek liquidity in a fragmented market, and its use in this context, as modified, should not be controversial.

Accordingly, the Exchange now proposes to amend Rule 4702(b)(14) (and implicitly, Rule 4702(b)(15)), because it would incorporate amendments to Rule 4702(b)(14) to permit members to enter M-ELO and M-ELO+CB Orders with a TIF instruction of IOC, with the caveat that, when used for these Order Types, the IOC instruction will activate upon the expiration of the Holding Period, unless the Order is unable to begin the Holding Period upon entry, in which case it will cancel immediately.

As part of the surveillance the Exchange currently performs, M-ELOs and M-ELO+CBs with IOC would be subject to real-time surveillance to determine if they are being abused by market participants. In addition, as is the case for ordinary M-ELOs and M-ELO+CBs, the Exchange will monitor the use of M-ELOs and M-ELO+CBs with IOC with the intent to apply additional measures, as necessary, to ensure their usage is appropriately tied to the intent of the Order Types. The Exchange is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior, such as excessive cancellations. 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 M-ELO or M-ELO+CB Order Types may be subject to penalties or other participant requirements to discourage such behavior, should it occur.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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.

The proposal will assist market participants in sourcing liquidity on the Exchange's M-ELO/M-ELO+CB Book so that they can minimize the opportunity costs associated with utilizing M-ELO and M-ELO+CB Orders and thus render use of M-ELO and M-ELO+CB more efficient and productive. At the same time, the proposal avoids exposing M-ELO and M-ELO+CB orders to the risks of adverse selection associated with aggressive IOC by proposing that, when used in the contexts of M-ELO and M-ELO+CB Orders, the IOC instruction will activate only at the expiration of the 10 millisecond Holding Period, rather than immediately upon Order entry, as orders with a TIF of IOC do in other contexts. The exception to this is if the M-ELO or M-ELO+CB Order with an IOC instruction is unable to begin the Holding Period upon entry, as will occur if the Market is crossed at the time of entry, there is no NBB or NBO at the time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint. In such cases, the Order will be cancelled immediately upon entry. Doing so is consistent with the spirit of the IOC instruction, in that the market participant is indicating a desire for their Order to persist for the minimum period possible, while a M-

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

ELO or M-ELO+CB Order that is ineligible to begin the Holding Period upon entry could potentially persist in a held state until it is cancelled by the System at the end of Market Hours. Crucially, the immediate cancel of an Order that is ineligible to begin the Holding Period upon entry does not provide information to the participant about the underlying state of the M-ELO/M-ELO+CB Book.¹⁴ When used in this context, IOC will not be useful to participants engaging in strategies that are time sensitive. Thus, this proposal will not frustrate the underlying design of M-ELO and M-ELO+CB Orders, which again is to provide investors, including institutional investors, with longer time horizons to safely interact with each other without interacting with aggressive or time sensitive orders.

4. 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. To the contrary, the proposal will enhance the utility and efficiency of the M-ELO and M-ELO+CB Order Types, which in turn will render the Exchange a more attractive venue for market participants that stand to benefit from these Order Types. The proposed IOC instruction will not burden intra-market competition as it will be available for use by all market participants.

¹⁴ The existence of resting interest on the M-ELO/M-ELO+CB Book is not a prerequisite for the Order to enter the Holding Period. Therefore, the cancellation of these M-ELOs and M-ELO+CBs only indicate that such Orders are not eligible to enter the Holding Period (i.e., the NBBO is crossed at the time of entry, there is no NBB or NBO at the time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint) and does not indicate whether there are available contra-side M-ELOs or M-ELO+CBs at the time of entry on Nasdaq. Consequently, the IOC instruction cannot be exploited to check the Book for liquidity in a riskless fashion (e.g., by cancelling before the Holding Period expires).

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

Not applicable.

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

Not applicable.

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.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2022-006)

January __, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Enable Exchange Members to enter Midpoint Extended Life Orders and M-ELO Plus Continuous Book Orders with an Immediate-or-Cancel Time-in-Force Instruction

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 January 19, 2022, 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 enable Exchange members to enter Midpoint Extended Life Orders (“M-ELOs”) and M-ELO Plus Continuous Book (“M-ELO+CB”) Orders with an immediate-or-cancel (“IOC”) Time-in-Force (“TIF”) instruction.³

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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.

³ Citations herein to the Nasdaq Rule 4000 Series shall refer to Equity 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 proposes to amend Rule 4702(b)(14) and (by implication) 4702(b)(15) to enable Exchange members to enter M-ELO and M-ELO+CB Orders with an IOC time-in-force instruction.

On March 7, 2018, the Commission issued an order approving the Exchange’s proposal to adopt the M-ELO as a new Order Type.⁴ A M-ELO is a non-displayed order that is available to all members but interacts only with other M-ELOs and M-ELO+CBs. It is priced at the midpoint between the National Best Bid and Offer (“NBBO”) and it does not become eligible for execution until at least 10 milliseconds elapse after its entry (the “Holding Period”).⁵ Once the Holding Period elapses, a M-ELO becomes eligible for execution against other M-ELOs and M-ELO+CBs on a time-priority basis.⁶

⁴ See Securities Exchange Act Release No. 34-82825 (Mar. 7, 2018), 83 FR 10937 (Mar. 13, 2018) (order approving SR-NASDAQ-2017-074).

⁵ In 2020, the Commission issued an order approving the Exchange’s proposal to shorten the Holding Period for M-ELO and M-ELO+CB Orders from one half second to 10 milliseconds. See Securities Exchange Act Release No. 34-88743 (April 24, 2020), 85 FR 24068 (April 30, 2020) (order approving SR-NASDAQ-2020-011). If a member modifies a MELO or M-ELO+CB during the Holding

A M-ELO+CB is an Order Type that has all the characteristics and attributes of a M-ELO Order, except that a M-ELO+CB that satisfies the Holding Period is eligible to execute (at the midpoint of the NBBO) against other eligible M-ELO+CBs, eligible M-ELOs, and also eligible non-displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders (“Midpoint Orders”) resting on the Exchange's Continuous Book.⁷

Presently, neither M-ELO nor M-ELO+CB Orders may be entered with a TIF of IOC. An Order with a TIF of IOC is one that is designated to deactivate immediately after determining whether the Order is marketable.⁸ In the Exchange’s proposal to establish the M-ELO Order Type, the Exchange explained that it decided to exclude IOCs from M-ELOs since it deemed the IOC TIF, by its nature, to be “inconsistent with the

Period, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will cause the Holding Period to reset.

⁶ If a member modifies a M-ELO or M-ELO+CB after the Holding Period elapses, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will trigger a new Holding Period for the order.

⁷ A M-ELO+CB is eligible to execute against a Midpoint Order if: (i) the Midpoint Order has the Midpoint Trade Now Attribute enabled; (ii) no other order is resting on the Continuous Book that has a more aggressive price than the current midpoint of the NBBO; (iii) the Midpoint Order has rested on the Exchange's Continuous Book for a minimum of 10 milliseconds after the NBBO midpoint falls within the limit set by the participant; and (iv) the Midpoint Order satisfies any minimum quantity requirement of the M-ELO+CB. A buy (sell) M-ELO+CB is ranked in time order at the midpoint among other buy (sell) M-ELO+CBs, buy (sell) Midpoint Extended Life Orders, and buy (sell) Midpoint Orders, as of the time when such Orders become eligible to execute. See Rule 4702(a)(15); see also Securities Exchange Act Release No. 34-86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (order approving SR-NASDAQ-2019-048).

⁸ Rule 4703(a)(1).

Holding Period requirement of the proposal.”⁹ That is, the Exchange designed M-ELO to provide a space where investors with longer time horizons, including institutional investors, can interact exclusively with each other – by virtue of a mutually-applicable Holding Period – without fear that aggressive order types could trade with M-ELOs or M-ELO+CBs to the detriment of such M-ELOs and M-ELO+CBs immediately upon entry and without waiting 10 milliseconds before doing so, such as immediately before a change in the NBBO for a particular security (i.e., risk of adverse selection).

Nevertheless, institutional investors – which again are the primary beneficiaries and users of M-ELO and M-ELO+CB – have approached the Exchange recently to request the ability to enter IOC instructions for their M-ELO and M-ELO+CB Orders as a means of assisting them in sourcing liquidity on the Exchange’s M-ELO/M-ELO+CB Book so that they can minimize the opportunity costs of utilizing M-ELO and M-ELO+CB Orders and thus render use of M-ELO and M-ELO+CB more efficient and productive for participants.

That is, the functionality would provide users with an indication as to whether eligible contra-side liquidity would be available to their M-ELO or M-ELO+CB Orders and allow these users to streamline their decision-making process of whether to send additional M-ELO or M-ELO+CB Orders to the Exchange or to seek liquidity elsewhere.¹⁰ It would also enable participants whose M-ELO or M-ELO+CB Orders do not satisfy the conditions for a Holding Period to commence upon Order entry to have

⁹ See Securities Exchange Act Release No. 34-81311 (August 3, 2017), 82 FR 37248 (August 9, 2017) (SR-NASDAQ-2017-074).

¹⁰ The Exchange understands that some participants representing institutional investor orders have developed methods that mimic the functions of IOC.

those Orders cancel immediately rather than be held by the System until such time as the conditions are met, which would allow these participants to assess whether they wish to submit new M-ELO or M-ELO+CB Orders that would satisfy the conditions to commence a Holding Period upon entry.

To avoid introducing the risks of adverse selection associated with enabling IOC in these contexts (discussed above), brokers representing institutional investors requested that when they enter M-ELO and M-ELO+CB Orders (which are eligible to commence a Holding Period upon entry) with an IOC instruction, the IOC instruction should activate only at the expiration of the 10 millisecond Holding Period, rather than immediately upon Order entry. In other words, only after the 10 millisecond Holding Period elapses would the System check to see if a M-ELO or M-ELO+CB Order with an IOC TIF is able to execute immediately against contra-side resting liquidity; if so, the Order will execute as it would currently, but if not, the System will automatically cancel the Order rather than keep it on the Book. If the Order at the time of entry is unable to begin the Holding Period (because, for example, it is entered with a limit price that is not at or better than the midpoint of the NBBO, if there is no NBB or NBO at the time of entry, or the NBBO is crossed at the time of entry), then the Order will be automatically cancelled immediately.

The Exchange agrees with the participants that requested this IOC functionality that when modified in this manner, its use with M-ELO and M-ELO+CB would serve a beneficial purpose that is not inconsistent with the Exchange's intentions and designs for these Order Types. That is, it would permit IOC users to check the M-ELO or M-

ELO+CB Book for contra-side liquidity, but not in an aggressive or riskless fashion.¹¹ Users of the IOC functionality in this context would still need to endure the Holding Period before utilizing it, and then execute against contra-side interest if it is available upon expiration of that Holding Period. While the proposal would provide for immediate cancellation of M-ELO and M-ELO+CB Orders that do not meet the conditions for a Holding Period to commence upon entry, the cancellation of these M-ELOs and M-ELO+CBs would only indicate that such Orders are not eligible to enter the Holding Period (i.e., the NBBO is crossed at the time of entry, there is no NBB or NBO at the time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint) and would not indicate whether there are available contra-side M-ELOs or M-ELO+CBs at the time of entry on Nasdaq. The Exchange also notes that, in other contexts, the use of IOCs is routine and recognized as a prudent way to seek liquidity in a fragmented market, and its use in this context, as modified, should not be controversial.

Accordingly, the Exchange now proposes to amend Rule 4702(b)(14) (and implicitly, Rule 4702(b)(15)), because it would incorporate amendments to Rule 4702(b)(14) to permit members to enter M-ELO and M-ELO+CB Orders with a TIF instruction of IOC, with the caveat that, when used for these Order Types, the IOC instruction will activate upon the expiration of the Holding Period, unless the Order is unable to begin the Holding Period upon entry, in which case it will cancel immediately.

As part of the surveillance the Exchange currently performs, M-ELOs and M-ELO+CBs with IOC would be subject to real-time surveillance to determine if they are being abused by market participants. In addition, as is the case for ordinary M-ELOs and

¹¹ Nasdaq reiterates that by design, spread-crossing orders do not interact with MELO or M-ELO+CB Orders.

M-ELO+CBs, the Exchange will monitor the use of M-ELOs and M-ELO+CBs with IOC with the intent to apply additional measures, as necessary, to ensure their usage is appropriately tied to the intent of the Order Types. The Exchange is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior, such as excessive cancellations. 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 M-ELO or M-ELO+CB Order Types may be subject to penalties or other participant requirements to discourage such behavior, should it occur.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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.

The proposal will assist market participants in sourcing liquidity on the Exchange's M-ELO/M-ELO+CB Book so that they can minimize the opportunity costs associated with utilizing M-ELO and M-ELO+CB Orders and thus render use of M-ELO and M-ELO+CB more efficient and productive. At the same time, the proposal avoids exposing M-ELO and M-ELO+CB orders to the risks of adverse selection associated with aggressive IOC by proposing that, when used in the contexts of M-ELO and M-

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

ELO+CB Orders, the IOC instruction will activate only at the expiration of the 10 millisecond Holding Period, rather than immediately upon Order entry, as orders with a TIF of IOC do in other contexts. The exception to this is if the M-ELO or M-ELO+CB Order with an IOC instruction is unable to begin the Holding Period upon entry, as will occur if the Market is crossed at the time of entry, there is no NBB or NBO at the time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint. In such cases, the Order will be cancelled immediately upon entry. Doing so is consistent with the spirit of the IOC instruction, in that the market participant is indicating a desire for their Order to persist for the minimum period possible, while a M-ELO or M-ELO+CB Order that is ineligible to begin the Holding Period upon entry could potentially persist in a held state until it is cancelled by the System at the end of Market Hours. Crucially, the immediate cancel of an Order that is ineligible to begin the Holding Period upon entry does not provide information to the participant about the underlying state of the M-ELO/M-ELO+CB Book.¹⁴ When used in this context, IOC will not be useful to participants engaging in strategies that are time sensitive. Thus, this proposal will not frustrate the underlying design of M-ELO and M-ELO+CB Orders, which again is to provide investors, including institutional investors, with longer time

¹⁴ The existence of resting interest on the M-ELO/M-ELO+CB Book is not a prerequisite for the Order to enter the Holding Period. Therefore, the cancellation of these M-ELOs and M-ELO+CBs only indicate that such Orders are not eligible to enter the Holding Period (i.e., the NBBO is crossed at the time of entry, there is no NBB or NBO at the time of entry, or the Order is entered with a limit price that is not at or better than the NBBO midpoint) and does not indicate whether there are available contra-side M-ELOs or M-ELO+CBs at the time of entry on Nasdaq. Consequently, the IOC instruction cannot be exploited to check the Book for liquidity in a riskless fashion (e.g., by cancelling before the Holding Period expires).

horizons to safely interact with each other without interacting with aggressive or time sensitive orders.

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. To the contrary, the proposal will enhance the utility and efficiency of the M-ELO and M-ELO+CB Order Types, which in turn will render the Exchange a more attractive venue for market participants that stand to benefit from these Order Types. The proposed IOC instruction will not burden intra-market competition as it will be available for use by all market participants.

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-2022-006 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-2022-006. 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-2022-006 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

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Equity Rules

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Equity 4: Equity Trading Rules

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4702. Order Types

(a) No change.

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

(1) – (13) No change.

(14) (A) A "**Midpoint Extended Life Order**" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until a minimum period of 10 milliseconds ("Holding Period") has passed after acceptance of the Order by the System. Eligible Midpoint Extended Life Orders may only execute against other eligible Midpoint Extended Life Orders and M-ELO+CB Orders. Buy (sell) Midpoint Extended Life Orders will be ranked in time order at the midpoint among other Buy (Sell) Midpoint Extended Life Orders and buy (sell) MELO+ CB Orders. A Midpoint Extended Life Order may be cancelled at any time. If a Midpoint Extended Life Order 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 will restart the Holding Period. If a Midpoint Extended Life Order 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 is eligible to execute, the Order will have to satisfy a new Holding Period to become eligible to execute.

If a limit price is assigned to a Midpoint Extended Life Order, the Order will be: (1) eligible for execution in time priority 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 set by the participant at which time the Holding Period will commence and thereafter the System will make the Order eligible for execution in time priority. For example, if the Best Bid was \$11 and the Best Offer was \$11.06, the price of the Midpoint Extended Life Order would be \$11.03. If a participant enters a Midpoint Extended Life Order to buy with a limit of \$11.02, the Holding Period would not begin until the midpoint price reached \$11.02. If a

Midpoint Extended Life Order has met the Holding Period requirement but the midpoint is no longer within its limit, it will nonetheless be ranked in time priority among other Midpoint Extended Life Orders and M-ELO+CBs if the NBBO later moves such that it is within the Order's limit price. Midpoint Extended Life Orders will not execute if there is a resting non-displayed Order priced more aggressively than the midpoint between the NBBO, and will be held for execution until the resting non-displayed Order is no longer on the Nasdaq Book or the midpoint of the NBBO matches the price of the resting non-displayed Order.

Midpoint Extended Life Orders in existence at the time a halt is initiated will be ineligible to execute and held by the System until trading has resumed and the NBBO has been received by Nasdaq.

Nasdaq will publish on Nasdaqtrader.com weekly aggregated number of shares and transactions of Midpoint Extended Life Orders executed on Nasdaq by security. The weekly aggregated data would be published with a delay of two weeks for NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility, and four weeks for all other NMS stocks. Nasdaq will also publish on Nasdaqtrader.com monthly aggregated block-sized trading statistics of total shares and total transactions of Midpoint Extended Life Orders executed on Nasdaq. A transaction would be considered "block-sized" if it meets any of the following categories of 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. For each of these categories, Nasdaq will publish monthly transaction count and share executed volume information. The data will be published no earlier than one month following the end of the month for which trading was aggregated.

(B) The following Order Attributes may be assigned to a Midpoint Extended Life Order:

- Minimum Quantity.
- Size.
- [A]Time-in-Force[other than IOC; provided that r]. Regardless of the Time-in-Force entered, a Midpoint Extended Life Order may not be active outside of Market Hours. A Midpoint Extended Life Order entered during Pre-Market Hours will be held by the System in time priority until Market Hours. Midpoint Extended Life Orders entered during Post-Market Hours will not be accepted by the System. A Midpoint Extended Life Order remaining unexecuted after 4:00 p.m. ET will be cancelled by the System. If a Midpoint Extended Life Order is entered with a Time-In-Force of IOC, it will execute against available eligible resting interest immediately upon the expiration of the Holding Period; if no such resting interest is available, or shares of the Order remain unexecuted after executing against eligible resting interest, then the System will automatically

cancel the Order or the remaining shares of the Order, as applicable; if the Order is ineligible to begin the Holding Period upon entry, then the System will cancel it immediately.

- Non-Display. All Midpoint Extended Life Orders are Non-Displayed.

(15) A "**Midpoint Extended Life Order Plus Continuous Book**" or "**M-ELO+CB**" is an Order Type that has all of the characteristics and attributes of a Midpoint Extended Life Order, as set forth above in subparagraph (14), except as follows:

- A M-ELO+CB that satisfies the Holding Period shall be eligible to execute (at the midpoint of the NBBO) against other eligible M-ELO+CBs, eligible Midpoint Extended Life Orders, and as described below, Non-Displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders (collectively, "Midpoint Orders") resting on the Exchange's Continuous Book. A M-ELO+CB shall be eligible to execute against a Midpoint Order if: (i) the Midpoint Order has the Midpoint Trade Now Attribute enabled; (ii) no other order is resting on the Continuous Book that has a more aggressive price than the current midpoint of the NBBO; (iii) the Midpoint Order has rested on the Exchange's Continuous Book for a minimum of 10 milliseconds after the NBBO midpoint falls within the limit set by the participant; and (iv) the Midpoint Order satisfies any minimum quantity requirement of the M-ELO+CB. A buy (sell) MELO+ CB will be ranked in time order at the midpoint among other buy (sell) MELO+ CBs, buy (sell) Midpoint Extended Life Orders, and buy (sell) Midpoint Orders, as of the time when such Orders become eligible to execute.
- QIX is not available for the entry of a M-ELO+CB.
- Nasdaq will include M-ELO+CB executions in the statistical information it publishes on Nasdaqtrader.com for M-ELOs.

(16) No change.

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