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
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–015 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–CboeBZX–2022–015. This file number should be included on the subject line if email 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–CboeBZX–2022–015 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05982 Filed 3–21–22; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94431; File No. SR–NASDAQ–2022–006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change To Enable Exchange Participants To Enter Midpoint Extended Life Orders and M–ELO Plus Continuous Book Orders With an Immediate-or-Cancel Time-in-Force Instruction

March 16, 2022.

I. Introduction

On January 19, 2022, 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 enable Exchange participants to enter Midpoint Extended Life Orders (''M–ELOs'') and M–ELO Plus Continuous Book Orders (''M–ELO+CBs'') with an immediate-or-cancel (''IOC'') Time-in-Force (''TIF'') instruction. The proposed rule change was published for comment in the **Federal Register** on February 2, 2022.[3] The Commission has not received any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

M–ELO is an order type with a non-display order attribute that is priced at the midpoint between the national best bid and national best offer (''NBBO'') and that will not be eligible to execute until a holding period of 10 milliseconds (''Holding Period'') has passed after acceptance of the order by the Exchange system.[4] Once a M–ELO becomes eligible to execute, the order may only execute against other eligible M–ELOs and M–ELO+CBs.[5]

M–ELO+CB is an order type that has all of the characteristics and attributes of a M–ELO, except that after satisfying its Holding Period, in addition to executing against other eligible M–ELO+CBs and M–ELOs, it may also execute against certain orders on the Exchange's continuous book.[6] Specifically, a M–ELO+CB may also execute against non-displayed orders with midpoint pegging and midpoint peg post-only orders (collectively, ''Midpoint Orders'') resting on the Exchange's continuous book, if: (1) The Midpoint Order has the midpoint trade now order attribute enabled; (2) the Midpoint Order has rested on the continuous book for at least 10 milliseconds after the NBBO midpoint falls within the limit price set by the participant; (3) no other order is resting on the continuous book that has a more aggressive price than the current NBBO midpoint; and (4) the Midpoint Order satisfies any minimum quantity requirement of the M–ELO+CB.[7]

Currently, M–ELOs and M–ELO+CBs may not be entered with a TIF of IOC.[8] The Exchange now proposes to amend Nasdaq Rule 4702(b)(14) to enable Exchange participants to enter M–ELOs and M–ELO+CBs with an IOC instruction.[9] As proposed, if a M–ELO or M–ELO+CB is entered with a TIF of IOC, it would execute against eligible resting interest immediately upon the expiration of the Holding Period.[10] If no eligible resting interest is available, or shares of the order remain unexecuted after trading against available eligible resting interest, then the system would automatically cancel the order or the remaining shares of the order, as applicable.[11] If the order is ineligible to begin the Holding Period upon entry (*i.e.,* the NBBO is crossed at the time of order entry, there is no NBB or NBO at the time of order entry, or the order is entered with a limit price that is not at or better than the NBBO midpoint), then the system would cancel the order immediately.[12]

As proposed, M–ELOs and M–ELO+CBs with a TIF of IOC would be subject to real-time surveillance to determine if they are being abused by

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94076 (January 27, 2022), 87 FR 5926 (''Notice'').

[4] *See* Nasdaq Equity 4, Rule (''Rule'') 4702(b)(14).

[5] *See id.*

[6] *See* Nasdaq Rule 4702(b)(15).

[7] *See id.*

[8] *See* Nasdaq Rule 4702(b)(14)(B), (b)(15). An order with a TIF of IOC is one that is designated to deactivate immediately after determining whether the order is marketable. *See* Nasdaq Rule 4703(a)(1).

[9] *See* proposed Nasdaq Rule 4702(b)(14)(B). Because Nasdaq Rule 4702(b)(15) incorporates by reference the M–ELO characteristics and attributes set forth in Nasdaq Rule 4702(b)(14), the proposed rule change would also allow M–ELO+CBs to be entered with a TIF of IOC.

[10] *See* proposed Nasdaq Rule 4702(b)(14)(B).

[11] *See id.*

[12] *See id.; Notice, supra* note 3, at 5928.

market participants.[13] Moreover, as is the case for all other M–ELOs and M–ELO+CBs, the Exchange would monitor the use of M–ELOs and M–ELO+CBs with a TIF of IOC, with the intent to apply additional measures, as necessary, to ensure that their usage is appropriately tied to the intent of the order types.[14] The Exchange states that it is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior, such as excessive cancellations.[15] 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 M–ELOs or M–ELO+CBs may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] 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.

The Commission believes that the proposed IOC functionality could make the use of M–ELOs and M–ELO+CBs more efficient for Exchange participants that choose to use these order types.[19] In particular, the proposed functionality could be attractive to Exchange participants that wish to enhance the efficiency of their decision-making process regarding whether to send additional M–ELOs or M–ELO+CBs to the Exchange or to seek liquidity elsewhere.[20] The proposed functionality could also enhance efficiency for Exchange participants that submit M–ELOs or M–ELO+CBs that do not satisfy the conditions for a Holding Period to commence upon order entry, because it would allow these orders to be cancelled immediately rather than be held by the system until such time as the conditions are met, and therefore allow these participants to more quickly assess whether they wish to submit new M–ELOs or M–ELO+CBs that would satisfy the conditions to commence a Holding Period upon entry.[21] Moreover, because M–ELOs and M–ELO+CBs are optional order types, if certain Exchange participants determine that the proposal would make these order types less attractive for their particular investment objectives, these participants may elect to reduce or eliminate their use of these order types.

In its original order approving M–ELO on the Exchange, the Commission stated its belief that the M–ELO order type could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.[22] In its order approving M–ELO+CB, the Commission stated its belief that, as with M–ELOs, M–ELO+CBs represent a reasonable effort to further enhance the ability of longer-term trading interest to participate effectively on an exchange.[23]

The Commission believes that the proposed IOC functionality for M–ELOs and M–ELO+CBs would not undermine the original intent of these order types. As proposed, these order types would continue to be available to market participants that 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. As described above, the IOC instruction would activate only at the expiration of the Holding Period, rather than immediately upon order entry. In addition, while M–ELOs and M–ELO+CBs with an IOC instruction would be cancelled immediately upon entry if they do not meet the conditions to start the Holding Period at the time of entry, such cancellation would not depend on the availability of eligible resting interest on the Exchange, and therefore would not provide any indication of the availability of such interest on the Exchange. Finally, as described above, the Exchange will continue to conduct real-time surveillance and monitor the use of M–ELOs and M–ELO+CBs, including those with a TIF of IOC, to determine whether these order types are being abused by market participants and whether their usage is appropriately tied to the intent of the order types.[24]

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASDAQ–2022–006) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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[13] *See* Notice, *supra* note 3, at 5928.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] 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).

[18] 15 U.S.C. 78f(b)(5).

[19] The Exchange states that institutional investors have approached the Exchange recently to request the ability to enter IOC instructions for M–ELOs and M–ELO+CBs. *See* Notice, *supra* note 3, at 5927. The Exchange also understands that some participants representing institutional investor orders have developed methods that mimic the functions of IOC. *See id.* at 5927 n.10.

[20] *See id.* at 5927.

[21] *See id.*

[22] *See* Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937, 10938–39 (March 13, 2018) (order approving SR–NASDAQ–2017–074). The Commission also stated that the M–ELO 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. *See id.* at 10940. In addition, the Commission stated that the M–ELO 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. *See id.*

[23] *See* Securities Exchange Act Release No. 86938 (September 11, 2019), 84 FR 48978, 48980–81 (September 17, 2019) (order approving SR–NASDAQ–2019–048).

[24] *See supra* notes 13–16 and accompanying text.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).