

already in place on BOX's electronic book, as well as non-discriminatory because they will uniformly apply to all BOX Market Makers, both floor and electronic.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other exchanges currently offer open-outcry floors. The Exchange believes that the proposed rules will allow the Exchange to compete with these other exchanges. Additionally, while the proposed rule changes would permit BOX to operate a Trading Floor, the Exchange is not requiring that Participants register and have a presence on the Trading Floor. Therefore, the proposed rule changes do not impose a burden on intra-market competition.

Overall, the proposal is pro-competitive for several reasons. In particular, by helping Floor Brokers at the Exchange compete for executions against floor brokers at other exchanges, it also helps them to be more efficient and provide a better audit trail of their executions on the Trading Floor. This, in turn, helps the Exchange compete against other exchanges in a deeply competitive landscape. The Exchange believes its proposed unique features for open-outcry trading will provide value to Floor Participants, which in turn, will help the Exchange compete.¹⁷⁸

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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 email to rule-comments@sec.gov. Please include File Number SR-BOX-2016-48 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-BOX-2016-48. 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 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 Web site 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 such 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-BOX-2016-48 and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79428; File No. SR-NASDAQ-2016-161]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New Extended Life Priority Order Attribute Under Rule 4703, and To Make Related Changes to Rules 4702, 4752, 4753, 4754, and 4757

November 30, 2016.

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 November 17, 2016, 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 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 adopt a new Extended Life Priority Order Attribute under Rule 4703, and to make related changes to Rules 4702, 4752, 4753, 4754, and 4757.

The text of the proposed rule change is available on the Exchange's Web site 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 Item IV below. The

¹⁷⁸ Unique features include proposed Rules 7600(h) and 8510(c)(1).

¹⁷⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 a new Extended Life Priority Order Attribute, which will allow Displayed Orders that are committed to a one-second or longer resting period to receive higher priority than other Displayed Orders of the same price on the Nasdaq Book. From its inception, Nasdaq has been an innovator and change agent in the financial markets. Innovation is in Nasdaq's DNA, beginning with the development of electronic trading and continuing today as we seek to bring new ideas to the financial markets, such as streamlined proxy voting using blockchain technology,³ strengthening investor protection through Limit Order Protection,⁴ and enhancing investor confidence in the Opening Cross.⁵ Nasdaq has not shied away from experimenting with new market structure in an effort to further refine our markets.⁶ The change proposed herein is another step forward in a long line of innovations Nasdaq has brought to the U.S. financial markets.

Background

As the markets became more automated in the 1990s and 2000s, and in particular since the implementation of the Regulation NMS Order Protection Rule (Rule 611) and the Access Rule (Rule 610) beginning in 2006,⁷ exchanges have generally based their execution algorithms on a price/display/time priority. Under this priority structure, the first displayed order at a price has priority over the next order and so on (this is also sometimes referred to as "First In First Out" or

"FIFO"). All displayed orders have priority over non-displayed orders at a price level. The price/display/time priority structure has brought with it many benefits:

- Competition has increased
- Bid/Offer spreads have decreased
- Trading costs have decreased
- Access to the markets has been democratized

Nonetheless, the price/display/time priority system may not serve the interests of all market participants. In particular, the price/display/time priority system provides incentives to set new prices and optimize trading strategies based on the time priority in an order book. Increasing competition in the price/time priority structure has led to market velocity and displayed order duration becoming widely discussed and debated topics in recent years. Over time, as order placement competition on Nasdaq has grown, the importance of an order's ranking in the order queue has increased. In addition, orders that access resting liquidity on exchanges have decreased in size due to the fragmented nature of the broader market and the adoption of algorithmic trading and routing strategies. As a result, when these smaller orders come to an exchange to access liquidity in the most liquid securities, there are orders deep in the queue that may not always have the opportunity to participate.

As an innovator, Nasdaq develops new functionality to promote the evolution of the markets. Nasdaq believes that it is imperative to address the needs of various market participants in new ways. Specifically, Nasdaq is proposing to supplement the ubiquitous price/display/time priority structure in the U.S. Equities markets to address the needs of market participants that focus their passive trading strategies on their ability to assume market risk by resting orders for an extended duration. Nasdaq believes that many of these participants have a longer investment horizon (*i.e.*, long term investors) and therefore are not necessarily monitoring minute changes in the best bid and offer over very short time periods and simply want opportunities to participate passively at the prevailing market when transactions occur. Nasdaq has consulted a wide swath of its market participants, including buy-side institutions, market makers, investment banks, and retail broker-dealers. In addition, Nasdaq has consulted with corporate issuers that list their securities on Nasdaq. Nasdaq has weighed various ideas on how to expand interaction on Nasdaq's order book to more participants (*e.g.*, long term investors) and believes that it is

better to provide incentives to reduce the potential for order adjustment and cancellation, rather than apply artificial latency mechanisms that may distort or have unintended consequences on market quality. Specifically, Nasdaq is proposing to provide an incentive to market participants that enter orders that are required to remain unaltered on the Nasdaq Book for a minimum time.

Proposal

Nasdaq is proposing to offer a new Order Attribute⁸ that will allow certain Displayed Orders⁹ to have priority ahead of other resting Displayed Orders on the Nasdaq Book at the same price. To receive this priority, an Order must be designated with the Order Attribute "Extended Life Priority" ("ELO") to indicate that the Order will not be altered or canceled by the member before the minimum resting time has elapsed.

Currently, Nasdaq's System¹⁰ places a time-stamp on each Order entered by a member, which determines the time ranking of the Order for purposes of processing the Order.¹¹ The System presents resting Orders on the Nasdaq Book for execution against incoming Orders in accordance with a price/display/time algorithm.¹² Price means that better priced Orders will be presented for execution first. For example, an order to buy at \$10.00 would be ranked before an order to buy at \$9.99. Display and Time mean that equally priced Orders with a Display

⁸ 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. See Rule 4701(e). 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. *Id.* An "Order Attribute" is a [sic] 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. *Id.* The Exchange describes the Order Types available on Nasdaq under Rule 4702 and describes the Order Attributes available on Nasdaq under Rule 4703.

⁹ Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as "Non-Displayed Orders." An Order with a Display Order Attribute may be referred to as a "Displayed Order." See Rule 4703(k).

¹⁰ As defined by Rule 4701(a).

¹¹ See Rule 4756(a)(2).

¹² See Rule 4757. The Exchange is proposing to amend Rule 4757 to reflect the proposed exception to the price/display/time algorithm, as discussed below.

³ See <http://ir.nasdaq.com/releasedetail.cfm?releaseid=954654>; see also <http://www.pcworld.com/article/3033075/nasdaq-to-use-blockchain-to-record-shareholder-votes.html>.

⁴ See Securities Exchange Act Release No. 78246 [sic] (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR-NASDAQ-2016-067).

⁵ See Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR-NASDAQ-2015-159).

⁶ For example, in February 2015 Nasdaq implemented an access fee pilot to determine the effect of reduced access fees on market quality. See Securities Exchange Act Release No. 73967 (December 30, 2014), 80 FR 594 (January 6, 2015) (SR-NASDAQ-2014-128).

⁷ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006); see also Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

Attribute will be ranked in time priority. Orders with a Non-Display Attribute, including the Non-Displayed portion of an Order with Reserve Size, are ranked in time priority behind all Displayed Orders.¹³ Processing Orders in this manner rewards market participants that take market risk by quickly and efficiently submitting Displayed Orders to the System to drive price formation on the Nasdaq Book. Price/display/time processing benefits the market by driving competition in Order flow, resulting in tighter bid/offer spreads and reducing overall costs to buy and sell securities. While this drive to reward setting new price levels (*i.e.*, being first at a given price) has led to highly efficient markets with significant volume on Nasdaq being attributed to firms that provide two-sided liquidity, pure price/display/time processing may limit certain customer segments from effectively participating, particularly in highly-liquid securities where the sequence of the arrival of Orders is important to participation in the ensuing transactions on the Nasdaq Book.

The Exchange has observed that many of the market participants that have not focused on efficient Order queue placement of Displayed Order entry often represent retail customer and institutional Order flow, which tend to have longer investment time horizons. Nasdaq believes that promoting Displayed Orders with longer time horizons will enhance the market so that it works for a wider array of market participants, and will benefit publicly traded companies by promoting long-term investment in corporate securities, whether listed on Nasdaq or other exchanges. To further this goal, the Exchange is proposing an exception to the general priority rules¹⁴ to allow Displayed Orders with an Extended Life Priority Attribute to earn queue priority on the Nasdaq Book at any given price level ahead of all other Displayed Orders without the Extended Life Priority Attribute. As discussed below, when there are multiple Orders with Extended Life Priority resting on the Nasdaq Book at the same price they would be ranked by time, therefore making the priority price/display/ELO/time.

Another component to consider with regards to the optimal priority structure is the risk associated with submitting a Displayed Order into the market. There

are various elements of risk that are considered when a market participant chooses a price and a time at which to post a Displayed Order on the Nasdaq Book. As noted earlier, price/display/time priority does not necessarily reward or recognize the various types of risks associated with an Order. Nasdaq believes that rewarding market participants that enter Displayed Orders and commit to a longer resting time on the Nasdaq Book, would enable it to broaden the types of behavior and incentives provided, in particular in securities in which the depth of the Nasdaq Book may inhibit these Orders from being placed on Nasdaq. As noted above, these market participants are typically considered long term investors, representing retail and institutional order flow.

In its initial implementation, Nasdaq plans to support the Extended Life Priority Attribute for Designated Retail Orders.¹⁵ While the Extended Life Priority Attribute may ultimately prove to benefit a broader set of participants, Nasdaq recognizes that any change of this magnitude can be disruptive to its membership and, consequently, it is prudent to implement this concept in a phased and measured manner. Generally, retail investors are longer term investors who measure stock performance over hours, days, months, *etc.* rather than seconds or milliseconds. Nasdaq recognizes that there are other market participants that are also long term investors in the market, such as institutional investors. To ensure that these market participants' needs are addressed, Nasdaq anticipates that it will extend the program to all Orders that meet the requirements of the

¹⁵ A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. Members must submit a signed written attestation, in a form prescribed by Nasdaq, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the member as "Designated Retail Orders" comply with these requirements. Orders may be designated on an order-by-order basis, or by designating all orders on a particular order entry port as Designated Retail Orders. See Rule 7018. The proposed change will not affect how Orders entered by sponsored access are treated for purposes of determining whether they are Designated Retail Orders.

Extended Life Priority Attribute after its successful implementation with Designated Retail Orders. During the initial retail phase, to be eligible to use the Extended Life Priority Attribute, a member must complete an attestation provided by Nasdaq, stating that the Designated Retail Orders it assigns an Extended Life Priority Attribute will meet the minimum performance standards required by Nasdaq. Nasdaq will determine from time to time what the appropriate parameters are with regards to how firms may qualify for the Extended Life Priority Attribute on Designated Retail Orders. Initially, Nasdaq will require that at least 99% of Designated Retail Orders with the Extended Life Priority Attribute exist unaltered on the Nasdaq Book for a minimum of one second.¹⁶ Nasdaq will require any member that enters Designated Retail Order with an Extended Life Priority Attribute to attest that it will comply with the minimum performance standards required by Nasdaq under the proposed new Rule 4703(m) to be eligible to enter Designated Retail Orders with an Extended Life Priority Attribute.

Nasdaq will carefully monitor members' use of the Extended Life Priority Attribute on a quarter-by-quarter basis and will not rely solely on a member's attestation with regard to Extended Life Priority usage. Nasdaq will determine whether a member was in compliance with the eligibility requirements for a given quarter within five business days of the end of that quarter. Any member that has not met the requirements in a quarter will be ineligible to receive Extended Life Priority treatment for its Orders in the quarter immediately following the quarter in which it did not comply.¹⁷ Following an ineligible quarter, a member may once again participate in the program if it completes a new attestation for the following quarter. If a member fails to meet the eligibility standards a second time, its Orders will not be eligible for Extended Life Priority for the two quarters immediately following the quarter in which it did not meet the eligibility requirements for the second time. If a member fails to meet the eligibility standards for a third time, it is no longer eligible to receive Extended Life Priority for its Orders.

To implement the retail phase of the Extended Life Priority Attribute, Nasdaq is developing a unique identifier that

¹⁶ Note that executions would not be counted as modifications.

¹⁷ The System will prevent a member that is not eligible to participate in the program from entering Orders that are flagged with Extended Life Priority (including such designation on the port level).

¹³ Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757. See Rule 4756(c)(3)(C).

¹⁴ *Supra* note 12.

will be appended to each Order entered by the member. Orders with the Extended Life Priority Attribute may be individually designated with the new identifier or entered through an Order port that has been set to designate, by default, all Orders with the new identifier. Orders marked with the new identifier—whether on an order-by-order basis or via a designated port—will be disseminated via Nasdaq's TotalView ITCH data feed.¹⁸ Thus, market participants will be able to identify Designated Retail Orders that have the Extended Life Priority Attribute.

As noted above, if an Order with Extended Life Priority is not marketable upon entry, the Order will post and display at its limit price, and will be ranked under the price/display/ELO/time priority structure. In other words, an Order with the Extended Life Priority Attribute will be ranked ahead of other Displayed Orders that do not have the Extended Life Priority attribute and behind any other Displayed Orders with Extended Life Priority that were received previously. For example, if five members attest to enter Orders designated with the Extended Life Priority Attribute and each member enters a Displayed Order so designated at the same price, the Order entered first will receive the highest priority among the five, the second Order will be ranked second, and so on; all Displayed Orders entered at the same price and not designated with the Extended Life Priority Attribute will be ranked behind the five Orders designated with the Extended Life Priority Attribute.

There are three instances in which an Order entered with the Extended Life Priority Attribute will not gain ELO priority. First, an Order with the Extended Life Priority Attribute will only have Extended Life Priority ranking at its displayed price. If an Order with the Extended Life Priority Attribute is ranked at a Non-Displayed price, it will be ranked without Extended Life Priority among Non-Displayed Orders. For example, if a Price to Comply Order¹⁹ with an Extended Life Priority Attribute to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be displayed at \$10.99, but ranked at a non-displayed price of \$11 without Extended Life Priority. If the Best Offer changes to \$11.01, the Price to Comply

Order would be ranked and displayed at \$11 with Extended Life Priority.

Second, a Designated Retail Order with a Non-Display Attribute that is also entered with Extended Life Priority will be added to the Nasdaq Book as a Non-Display Order without Extended Life Priority, following price/display/time processing among resting Orders without Extended Life Priority.

Third, while cross-specific Orders marked with Extended Life Priority will be eligible to participate in the Nasdaq Opening,²⁰ Closing²¹ and Halt²² Crosses, they will be ranked without Extended Life Priority.²³ Orders with the Extended Life Priority Attribute that are ranked on the Nasdaq Order Book (*i.e.*, orders that are in the continuous market) will retain Extended Life Priority if they are part of the Cross execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ 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. Nasdaq believes that the proposed change is consistent with this provision of the Act because it is an attempt to improve the quality of the market by rewarding market participants for longer-life Order flow. Importantly, Nasdaq is not applying any programmatic or intentional delay to incoming Orders that are attempting to access the market. Instead, Nasdaq's proposal seeks to provide an incentive to market participants to improve the market on Nasdaq by recognizing the value of certain behaviors. Nasdaq currently provides incentives in the form of reduced fees and rebates in return for market-improving behavior. For example, Nasdaq's NBBO Program provides pricing incentives for participants that, among other things, establish the NBBO.²⁶ With Extended Life Priority, Nasdaq is providing members an opportunity to gain priority at any particular price level in return for providing market-improving behavior in

the form of longer-lived displayed quote. As discussed above, a great deal of the liquidity that is provided on exchanges is from market makers and automated liquidity providers, who have invested in technology and efficiency, which has resulted in many positive developments such as deep and liquid markets. The proposed Extended Life Priority Attribute has the potential to attract a more diverse set of liquidity providers with a longer term focus on investing and trading.

Nasdaq believes that requiring Designated Retail Orders to exist on the Nasdaq Book unaltered for at least one second is a meaningful time, representing a significant level of risk taken by the market participant in return for the priority in the Nasdaq Book. In addition, Nasdaq is initially requiring members to attest that at least 99% of the Designated Retail Orders submitted with Extended Life Priority exist on the Nasdaq Book unaltered for at least one second.²⁷ As discussed above, Nasdaq will review Orders from members marked as Designated Retail Orders with the Extended Life Priority Attribute for compliance on a quarterly basis. Eligibility for a given quarter will be based on the previous quarter's analysis. Within five business days of the end of a given quarter, Nasdaq will determine whether a participant has met the eligibility requirements. If a member's Orders do not qualify, it will not be eligible for Extended Life Priority for the quarter immediately following the quarter in which it did not meet the eligibility requirements. Following an ineligible quarter a member may once again participate in the program if it completes a new attestation. If a member is determined to have not met the eligibility standards a second time, it will not be eligible for Extended Life Priority for the two quarters immediately following the quarter in which it did not meet the eligibility requirements for the second time. If a member is determined to have not met the eligibility standards for a third time, it is no longer eligible to participate in the program. Thus, Nasdaq believes that the attestation process coupled with rigorous quarterly monitoring and increasing periods of ineligibility for repeated non-compliance with the eligibility standards will serve to dissuade any member from abusing the attestation process, thereby protecting investors and the public interest.²⁸

²⁷ Nasdaq will periodically assess the effectiveness of the eligibility criteria, and make any changes to the criteria through rulemaking.

²⁸ Nasdaq notes that members entering Orders with Extended Life Priority are subject to regulatory

¹⁸ See <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> for a description of TotalView ITCH.

¹⁹ See Rule 4702(b)(1).

²⁰ See Rule 4752.

²¹ See Rule 4754.

²² See Rule 4753.

²³ These are Orders that are designated to participate in the Opening or Closing Cross, and are not available for execution in continuous trading.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Rule 7014(g).

Nasdaq believes that, if successful, the proposed change may bring greater stability to the Displayed quote and increase Displayed size on Nasdaq. Thus, Nasdaq believes that the Extended Life Priority Attribute is good for market structure because it may provide incentive to market participants that are long-term investors and may diversify Order interaction on Nasdaq, thereby enhancing price discovery and market resiliency.

Although the proposed change is novel in U.S. equity markets, certain U.S. options markets currently grant preference in their order books for customer orders.²⁹ On the NASDAQ PHLX options market, priority in the order book is given to Orders entered for a customer account over a controlled account. A controlled account includes any account controlled by or under common control with a broker-dealer, and customer accounts are all other accounts.³⁰ Moreover, the concept of rewarding market participants that provide Orders that live for a certain minimum time is currently used in Canada by the Toronto Stock Exchange. Named the "Long Life" order type, it is designed to enhance the quality of execution for natural investors and their dealers by rewarding those willing to commit liquidity to the book for a minimum period of time and by enabling participants to gain priority in return for a longer resting time.³¹ The Exchange is proposing to initially limit the proposed change to Designated Retail Orders. Nasdaq believes that the retail customers represented by such Orders have the potential to immediately and with minimal technological effort, benefit from the proposed change. Moreover, Nasdaq believes that implementing the change incrementally will reduce risk, ensure that market participants are allowed adequate time to adjust to the new Order Attribute, and provide Nasdaq with useful data with which it can

review and inspection, including a review of their procedures and processes for compliance with Extended Life Priority eligibility.

²⁹ See, e.g., PHLX Rule 1014(g)(vii)(B) (providing that quotations entered electronically by the specialist, an RSQT or an SQT that do not cause an order resting on the limit order book to become due for execution may be matched at any time by quotations entered electronically by the specialist and/or other SQTs and RSQTs, and by ROT limit orders and shall be deemed to be on parity, subject to the requirement that orders of controlled accounts must yield priority to customer orders as set forth in Rule 1014(g)(i)(A)).

³⁰ See PHLX Rule 1014(g)(i)(A).

³¹ See <https://www.tmx.com/newsroom/press-releases?id=352>; see also http://www.osc.gov.on.ca/documents/en/Marketplaces/xrx-tsx_20150818 amd-rule-book-policies.pdf (Notice of Approval).

further improve the proposed Order Attribute.

For these reasons Nasdaq believes that the proposed Extended Life Order further perfects the mechanism of a free and open market, promotes competition, broadens participation in the market, considers the cost/benefit of implementation and provides market participants with incentive to provide market-improving Order flow.

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

Nasdaq 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. Rather, Nasdaq believes that the proposed change increases competition among market participants because it allows certain market participants to compete based on elements other than the sequence of order arrival. Specifically, the proposed change will allow market participants that have not invested in limit order queue placement but rather take risk by allowing an Order to rest on the Nasdaq Book unchanged for a certain duration to gain priority in the Nasdaq Book. Although market participants that do not submit Orders that qualify as Extended Life Orders may lose priority to Extended Life Orders on the Nasdaq Book, any burden arising therefrom is necessary to further refine the market to serve a broader group of market participants. In particular, Nasdaq believes Extended Life Priority will incentivize behavior from participants that currently, may struggle to participate and are willing to provide market-improving Order flow, which benefits all market participants. Moreover, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if they deem participation in Nasdaq's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited. Last, to the extent the proposed change is successful in attracting retail Order flow, Nasdaq also believes that the proposed change will promote competition among trading venues by making Nasdaq a more

attractive trading venue for long-term investors and therefore capital formation.

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.

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Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-161 on the subject line.

Paper comments

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those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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-2016-161 and should be submitted on or before December 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Rule 12h-1(f); SEC File No. 270-570; OMB Control No. 3235-0632.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 12h-1(f) (17 CFR 240.12h-1(f)) under the Securities Exchange Act of 1934 ("Exchange Act") provides an exemption from the Exchange Act Section 12(g) registration requirements for compensatory employee stock options of issuers that are not required to file periodic reports under the Exchange Act. The information required under Exchange Act Rule 12h-1 is not filed with the Commission. Exchange Act Rule 12h-1(f) permits issuers to provide the required information to the

option holders either by: (i) Physical or electronic delivery of the information; or (ii) written notice to the option holders of the availability of the information on a password-protected Internet site. We estimate that it takes approximately 2 burden hours per response to prepare and provide the information required under Rule 12h-1(f) and it is prepared and provided by approximately 40 respondents. We estimate that 25% of the 2 hours per response (0.5 hours per response) is prepared by the company for a total annual reporting burden of 20 hours (0.5 hours per response × 40 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 23, 2016.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-29088 Filed 12-2-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79425; File No. SR-Phlx-2016-115]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

November 29, 2016.

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 November 16, 2016, NASDAQ PHLX LLC ("Phlx" 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 amend Phlx Rule 1034 (Minimum Increments),³ to extend through June 30, 2017 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"), and to change the date when delisted classes may be replaced in the Penny Pilot.⁴

Proposed new language is *italicized* and proposed deleted language is [bracketed].

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NASDAQ PHLX Rules

Options Rules

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Rule 1034. Minimum Increments

(a) Except as provided in subparagraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at \$3.00 or higher shall have a minimum increment of \$.10, and all options on stocks and index options quoting in decimals under \$3.00 shall have a minimum increment of \$.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire [December 31, 2016] *June 30, 2017* or the date of permanent approval, if earlier (the "pilot"), certain options shall be quoted and traded on the Exchange in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying the PowerShares QQQ Trust ("QQQQ")[®], SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM") shall be quoted and traded in minimum

³ References herein to rules refer to rules of Phlx, unless otherwise noted.

⁴ The Penny Pilot was established in January 2007 and was last extended in 2016. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74); 75286 (June 24, 2015), 80 FR 37333 (June 30, 2015) (SR-Phlx-2015-54) (notice of filing and approval order establishing Penny Pilot); and 78060 (June 14, 2016), 81 FR 39979 (June 20, 2016) (SR-Phlx-2016-47) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 17 CFR 200.30-3(a)(12).