

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 011 Amendment No. (req. for Amendments *)
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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"/>
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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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 \*).

Proposed rule change to amend rules 4702(b)(14) and (b)(15) to shorten the holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book

**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 \* Senior Associate General Counsel  
 E-mail \* brett.kitt@nasdaq.com  
 Telephone \* (301) 978-8132    Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Date 02/20/2020    EVP and Chief Legal Officer  
 By John Zecca   

(Name \*)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rules 4702(b)(14) and (b)(15) of the Exchange’s Rulebook to shorten the holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book.

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 of the Exchange (the “Board”) on January 30, 2019. No other action is necessary for the filing of the rule change.

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

Brett Kitt  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-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 Rules 4702(b)(14) and (15) of the Exchange's Rulebook to shorten the holding period requirements for its Midpoint Extended Life Order ("M-ELO) and Midpoint Extended Life Order Plus Continuous Book ("M-ELO+CB") Order Types.

In 2018, the Exchange introduced the M-ELO, which is a Non-Displayed Order priced at the Midpoint between the National Best Bid and Offer ("NBBO") and which is eligible for execution only against other eligible M-ELOs and only after a minimum of one-half second passes from the time that the System accepts the order (the "Holding Period").<sup>3</sup> In 2019, the Exchange introduced the M-ELO+CB, which closely resembles the M-ELO, except that a M-ELO+CB may execute at the midpoint of the NBBO, not only against other eligible M-ELOs (and M-ELO+CBs), but also against Non-Displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders ("Midpoint Orders") that rest on the Continuous Book for at least one-half second and have Midpoint Trade Now enabled.<sup>4</sup> For both M-ELOs and M-ELO+CBs, the Holding Period is the same length of time.

When the Exchange designed M-ELO, it set the length of the Holding Period at one-half second because it determined that this time period would be sufficient to ensure

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<sup>3</sup> See Securities Exchange Act Release No. 34-82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR-NASDAQ-2017-074) ("M-ELO Approval Order").

<sup>4</sup> See Securities Exchange Act Release No. 34-86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (SR-NASDAQ-2019-048) ("M-ELO+CB Approval Order").

that likeminded investors would interact only with each other, and with minimal market impacts. Additionally, the Exchange chose one-half second because it was then, and it remains today, a time period that is significantly longer than the delay mechanisms that other exchanges employ for similar purposes, such as the IEX 350 microsecond speed bump. The Exchange believed that the longer length of the M-ELO Holding Period and its simplicity in design would provide greater protection for participants than they could achieve through competing delay mechanisms.

Although the Holding Period requirement is a key design element of both the M-ELO and the M-ELO+CB, the length of that Holding Period is not sacrosanct. After adopting the M-ELO, the Exchange studied the actual use and performance of M-ELOs, as well as customer feedback, and make refinements, as necessary, to improve its operation and effectiveness. Indeed, such study and feedback is what prompted the Exchange last year to introduce the M-ELO+CB Order Type as well as to enhance M-ELO by permitting odd-lot order sizes.<sup>5</sup>

Now, after observing M-ELO and M-ELO+CB trading over the past two years, and after gathering feedback from market participants, in particular those that trade with a longer time horizon and who are concerned with market impact, the Exchange has determined that the length of the Holding Period can and should be re-calibrated. Although the Exchange designed M-ELO and M-ELO+CB for use by market participants that are less concerned with achieving rapid executions of their Orders than are other participants, that is not to say that M-ELO and M-ELO+CB users are indifferent about the length of time in which their M-ELOs and M-ELO+CBs must wait before they are

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<sup>5</sup> See Securities Exchange Act Release No. 34-86416 (July 19, 2019), 84 FR 35918 (July 25, 2019) (SR-NASDAQ-2019-044).

eligible for execution. Indeed, participants have informed the Exchange that in certain circumstances, such as when they seek to trade symbols that on average have a lower time-to-execution than a half-second, they are reticent to enter M-ELOs or M-ELO+CBs because even though they want the protections that M-ELO and M-ELO+CB provide, the associated Holding Periods for these Order Types are too long and present countervailing risks. That is, the Holding Periods are longer than necessary and, during the residual portion of the Holding Periods, participants risk losing out on favorable execution opportunities that would otherwise be available to them had they placed a non-MELO order. The Exchange also notes that many institutional routing strategies recalibrate using a “heatmap” where they will route an order based on where trade activity is occurring, at times; this recalibration occurs prior to the completion of the M-ELO and M-ELO+CB Holding Periods. For such participants, the opportunity cost of missed execution opportunities may outweigh the protective benefits that M-ELOs and M-ELO+CBs provide.

Based upon this feedback, the Exchange studied the potential effects of reducing the length of the Holding Periods for both M-ELOs and M-ELO+CBs (as well as for Midpoint Orders that would execute against M-ELO+CBs). Ultimately, the Exchange determined that it could reduce the Holding Periods to 10 milliseconds without compromising the protective power that M-ELO and M-ELO+CB are intended to provide to participants and investors. Indeed, the Exchange examined each of its historical M-ELO executions to determine at what Midpoints of the NBBO the M-ELOs would have executed if their Holding Periods had been shorter than one-half second (500 milliseconds). After examining the historical effects of shorter Holding Periods of

between 10 milliseconds and 400 milliseconds, the Exchange determined that a reduction of the M-ELO Holding Period to as short as 10 milliseconds would have caused an average impact on markouts of only 0.10 basis points (across all symbols). In other words, compared to the execution price of an average M-ELO with a one-half second Holding Period, the Exchange found that a M-ELO with a 10 millisecond Holding Period would have had an average post-execution impact that was only a tenth of a basis point per share – a difference in protective effect that is immaterial.<sup>6</sup> Thus, the Exchange determined that shortening the Holding Periods to 10 milliseconds for M-ELOs and M-ELO+CBs would increase the efficacy of the mechanism while not undermining the power of those Order Types to fulfill their underlying purpose of minimizing market impacts. The Exchange notes that, even at a length of 10 milliseconds, the Holding Periods still will be as or more effective than the delay mechanisms that competing exchanges employ, such that the M-ELO and M-ELO+CB would remain among the highest-performing order types available to market participants. At the same time, the Exchange determined that a reduction in the Holding Periods to 10 milliseconds would dramatically add to the circumstances in which M-ELOs and M-ELO+CBs would be useful to participants. Accordingly, the Exchange proposes to amend Rules 4702(b)(14) and (15) to decrease to 10 milliseconds the length of the Holding Periods for M-ELOs and M-ELO+CB, along with the length of the corresponding resting period for Midpoint Orders on the Continuous Book that are eligible to interact with M-ELO+CBs.

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<sup>6</sup> See Nasdaq, “The Midpoint Extended Life Order (M-ELO); M-ELO Holding Period,” available at <https://www.nasdaq.com/articles/the-midpoint-extended-life-order-m-elo%3A-m-elo-holding-period-2020-02-13> (analyzing effects of shortened Holding Periods on M-ELO performance).

The Exchange intends to make the proposed change effective for M-ELOs and M-ELO+CBs in the Second Quarter of 2020. The Exchange will publish a Trader Alert at least 14 days in advance of making the proposed change effective.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing for more widespread use of M-ELOs and M-ELO+CBs.

When the Commission approved the M-ELO and the M-ELO+CB, it determined that these Order Types are consistent with the Act because they “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.”<sup>9</sup> Nothing about the Exchange’s proposal should cause the Commission to revisit or rethink this determination. Indeed, the proposal will not alter the fundamental design of these Order Types, the manner in which they operate, or their effects.

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> M-ELO Approval Order, supra 83 FR at 10938–39; M-ELO+CB Approval Order, supra, 84 FR at 48980.



Even with shortened 10 millisecond Holding Periods, M-ELOs and M-ELO+CBs will continue to provide their users with protection against information leakage and adverse selection – and they will do so at levels which are substantially undiminished from that which they provide now.<sup>10</sup> The 10 millisecond Holding Periods, moreover, will remain longer than any delay mechanisms which the Exchange’s competitors presently employ.

At the same time, however, the proposal will benefit market participants and investors by reducing the opportunity costs of utilizing M-ELOs and M-ELO+CBs. The proposal, in other words, will re-calibrate the lengths of the Holding Periods so that M-ELOs and M-ELO+CBs will operate in the “Goldilocks” zone – their Holding Periods will not be so short as to render them unable to provide meaningful protections against information leakage and adverse selection, but the Holding Periods also will not be too long so as to cause participants and investors to miss out on favorable execution opportunities. Nasdaq believes the proposal will render M-ELOs and M-ELO+CBs more useful and attractive to market participants and investors, and this increased utility and attractiveness, in turn, will spur an increase in M-ELO and M-ELO+CB use cases on the Exchange, both from new and existing users of M-ELOs and M-ELO+CBs. Ultimately, the proposal should enhance market quality by opening up more use cases for midpoint executions on the Exchange.

The Exchange notes that use of M-ELOs and M-ELO+CBs remains voluntary for all market participants. Accordingly, if any market participant feels that the shortened Holding Period is still too long or too short or because competing venues offer more

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<sup>10</sup> See note 6, supra.

attractive delay mechanisms, then the participants are free to pursue other trading strategies or utilize other trading venues. They need not utilize M-ELOs or M-ELO+CBs.

Finally, the Exchange notes that it will continue to conduct real-time surveillance to monitor the use of M-ELOs and M-ELO+CBs to ensure that such usage remains appropriately tied to the intent of the Order Types. If, as a result of such surveillance, the Exchange determines that the shortened Holding Periods do not serve their intended purposes, or adversely impact market quality, then the Exchange will seek to make further re-calibrations.

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 Exchange believes that this proposal will promote the competitiveness of the Exchange by rendering its M-ELO and M-ELO+CB Order Types more attractive to participants.

The Exchange adopted the M-ELO and M-ELO+CB as pro-competitive measures intended to increase participation on the Exchange by allowing certain market participants that may currently be underserved on regulated exchanges to compete based on elements other than speed. The proposed change continues to achieve this purpose. With shortened 10 millisecond Holding Periods, both M-ELOs and M-ELO+CBs will afford their users with a level of protection from information leakage and adverse selection that is not materially different from what they presently provide.<sup>11</sup> At the same

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<sup>11</sup> See id.

time, the shortened Holding Period will increase opportunities to interact with other like-minded investors with longer time horizons while also lowering the opportunity costs for participants that utilize M-ELOs and M-ELO+CBs, particularly for securities that trade within the “Goldilocks” zone. In sum, the proposed changes will not burden competition, but instead may promote competition for liquidity in M-ELOs and M-ELO+CBs by broadening the circumstances in which market participants may find such Orders to be useful. With the proposed changes, market participants will be more likely to determine that the benefits of entering M-ELOs and M-ELO+CBs outweigh the risks of doing so.

The proposed change will not place a burden on competition among market venues, as any market may adopt an order type that operates similarly to a M-ELO or a M-ELO+CB with a 10 millisecond Holding Period.

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

The Exchange does not consent to an extension of the time period for Commission action.

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-2020-011)

February \_\_, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rules 4702(b)(14) and (b)(15) to Shorten the Holding Period Requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 20, 2020, 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 amend Rules 4702(b)(14) and (b)(15) of the Exchange’s Rulebook to shorten the holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-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 Rules 4702(b)(14) and (15) of the Exchange's Rulebook to shorten the holding period requirements for its Midpoint Extended Life Order ("M-ELO) and Midpoint Extended Life Order Plus Continuous Book ("M-ELO+CB") Order Types.

In 2018, the Exchange introduced the M-ELO, which is a Non-Displayed Order priced at the Midpoint between the National Best Bid and Offer ("NBBO") and which is eligible for execution only against other eligible M-ELOs and only after a minimum of one-half second passes from the time that the System accepts the order (the "Holding Period").<sup>3</sup> In 2019, the Exchange introduced the M-ELO+CB, which closely resembles the M-ELO, except that a M-ELO+CB may execute at the midpoint of the NBBO, not only against other eligible M-ELOs (and M-ELO+CBs), but also against Non-Displayed Orders with Midpoint Pegging and Midpoint Peg Post-Only Orders ("Midpoint Orders") that rest on the Continuous Book for at least one-half second and have Midpoint Trade

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<sup>3</sup> See Securities Exchange Act Release No. 34-82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR-NASDAQ-2017-074) ("M-ELO Approval Order").

Now enabled.<sup>4</sup> For both M-ELOs and M-ELO+CBs, the Holding Period is the same length of time.

When the Exchange designed M-ELO, it set the length of the Holding Period at one-half second because it determined that this time period would be sufficient to ensure that likeminded investors would interact only with each other, and with minimal market impacts. Additionally, the Exchange chose one-half second because it was then, and it remains today, a time period that is significantly longer than the delay mechanisms that other exchanges employ for similar purposes, such as the IEX 350 microsecond speed bump. The Exchange believed that the longer length of the M-ELO Holding Period and its simplicity in design would provide greater protection for participants than they could achieve through competing delay mechanisms.

Although the Holding Period requirement is a key design element of both the M-ELO and the M-ELO+CB, the length of that Holding Period is not sacrosanct. After adopting the M-ELO, the Exchange studied the actual use and performance of M-ELOs, as well as customer feedback, and make refinements, as necessary, to improve its operation and effectiveness. Indeed, such study and feedback is what prompted the Exchange last year to introduce the M-ELO+CB Order Type as well as to enhance M-ELO by permitting odd-lot order sizes.<sup>5</sup>

Now, after observing M-ELO and M-ELO+CB trading over the past two years, and after gathering feedback from market participants, in particular those that trade with a

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<sup>4</sup> See Securities Exchange Act Release No. 34-86938 (September 11, 2019), 84 FR 48978 (September 17, 2019) (SR-NASDAQ-2019-048) (“M-ELO+CB Approval Order”).

<sup>5</sup> See Securities Exchange Act Release No. 34-86416 (July 19, 2019), 84 FR 35918 (July 25, 2019) (SR-NASDAQ-2019-044).

longer time horizon and who are concerned with market impact, the Exchange has determined that the length of the Holding Period can and should be re-calibrated. Although the Exchange designed M-ELO and M-ELO+CB for use by market participants that are less concerned with achieving rapid executions of their Orders than are other participants, that is not to say that M-ELO and M-ELO+CB users are indifferent about the length of time in which their M-ELOs and M-ELO+CBs must wait before they are eligible for execution. Indeed, participants have informed the Exchange that in certain circumstances, such as when they seek to trade symbols that on average have a lower time-to-execution than a half-second, they are reticent to enter M-ELOs or M-ELO+CBs because even though they want the protections that M-ELO and M-ELO+CB provide, the associated Holding Periods for these Order Types are too long and present countervailing risks. That is, the Holding Periods are longer than necessary and, during the residual portion of the Holding Periods, participants risk losing out on favorable execution opportunities that would otherwise be available to them had they placed a non-MELO order. The Exchange also notes that many institutional routing strategies recalibrate using a “heatmap” where they will route an order based on where trade activity is occurring, at times; this recalibration occurs prior to the completion of the M-ELO and M-ELO+CB Holding Periods. For such participants, the opportunity cost of missed execution opportunities may outweigh the protective benefits that M-ELOs and M-ELO+CBs provide.

Based upon this feedback, the Exchange studied the potential effects of reducing the length of the Holding Periods for both M-ELOs and M-ELO+CBs (as well as for Midpoint Orders that would execute against M-ELO+CBs). Ultimately, the Exchange



determined that it could reduce the Holding Periods to 10 milliseconds without compromising the protective power that M-ELO and M-ELO+CB are intended to provide to participants and investors. Indeed, the Exchange examined each of its historical M-ELO executions to determine at what Midpoints of the NBBO the M-ELOs would have executed if their Holding Periods had been shorter than one-half second (500 milliseconds). After examining the historical effects of shorter Holding Periods of between 10 milliseconds and 400 milliseconds, the Exchange determined that a reduction of the M-ELO Holding Period to as short as 10 milliseconds would have caused an average impact on markouts of only 0.10 basis points (across all symbols). In other words, compared to the execution price of an average M-ELO with a one-half second Holding Period, the Exchange found that a M-ELO with a 10 millisecond Holding Period would have had an average post-execution impact that was only a tenth of a basis point per share – a difference in protective effect that is immaterial.<sup>6</sup> Thus, the Exchange determined that shortening the Holding Periods to 10 milliseconds for M-ELOs and M-ELO+CBs would increase the efficacy of the mechanism while not undermining the power of those Order Types to fulfill their underlying purpose of minimizing market impacts. The Exchange notes that, even at a length of 10 milliseconds, the Holding Periods still will be as or more effective than the delay mechanisms that competing exchanges employ, such that the M-ELO and M-ELO+CB would remain among the highest-performing order types available to market participants. At the same time, the Exchange determined that a reduction in the Holding Periods to 10 milliseconds would

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<sup>6</sup> See Nasdaq, “The Midpoint Extended Life Order (M-ELO); M-ELO Holding Period,” available at <https://www.nasdaq.com/articles/the-midpoint-extended-life-order-m-elo%3A-m-elo-holding-period-2020-02-13> (analyzing effects of shortened Holding Periods on M-ELO performance).

dramatically add to the circumstances in which M-ELOs and M-ELO+CBs would be useful to participants. Accordingly, the Exchange proposes to amend Rules 4702(b)(14) and (15) to decrease to 10 milliseconds the length of the Holding Periods for M-ELOs and M-ELO+CB, along with the length of the corresponding resting period for Midpoint Orders on the Continuous Book that are eligible to interact with M-ELO+CBs.

The Exchange intends to make the proposed change effective for M-ELOs and M-ELO+CBs in the Second Quarter of 2020. The Exchange will publish a Trader Alert at least 14 days in advance of making the proposed change effective.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing for more widespread use of M-ELOs and M-ELO+CBs.

When the Commission approved the M-ELO and the M-ELO+CB, it determined that these Order Types are consistent with the Act because they “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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

result from their orders.”<sup>9</sup> Nothing about the Exchange’s proposal should cause the Commission to revisit or rethink this determination. Indeed, the proposal will not alter the fundamental design of these Order Types, the manner in which they operate, or their effects.

Even with shortened 10 millisecond Holding Periods, M-ELOs and M-ELO+CBs will continue to provide their users with protection against information leakage and adverse selection – and they will do so at levels which are substantially undiminished from that which they provide now.<sup>10</sup> The 10 millisecond Holding Periods, moreover, will remain longer than any delay mechanisms which the Exchange’s competitors presently employ.

At the same time, however, the proposal will benefit market participants and investors by reducing the opportunity costs of utilizing M-ELOs and M-ELO+CBs. The proposal, in other words, will re-calibrate the lengths of the Holding Periods so that M-ELOs and M-ELO+CBs will operate in the “Goldilocks” zone – their Holding Periods will not be so short as to render them unable to provide meaningful protections against information leakage and adverse selection, but the Holding Periods also will not be too long so as to cause participants and investors to miss out on favorable execution opportunities. Nasdaq believes the proposal will render M-ELOs and M-ELO+CBs more useful and attractive to market participants and investors, and this increased utility and attractiveness, in turn, will spur an increase in M-ELO and M-ELO+CB use cases on the Exchange, both from new and existing users of M-ELOs and M-ELO+CBs. Ultimately,

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<sup>9</sup> M-ELO Approval Order, supra 83 FR at 10938–39; M-ELO+CB Approval Order, supra, 84 FR at 48980.

<sup>10</sup> See note 6, supra.

the proposal should enhance market quality by opening up more use cases for midpoint executions on the Exchange.

The Exchange notes that use of M-ELOs and M-ELO+CBs remains voluntary for all market participants. Accordingly, if any market participant feels that the shortened Holding Period is still too long or too short or because competing venues offer more attractive delay mechanisms, then the participants are free to pursue other trading strategies or utilize other trading venues. They need not utilize M-ELOs or M-ELO+CBs.

Finally, the Exchange notes that it will continue to conduct real-time surveillance to monitor the use of M-ELOs and M-ELO+CBs to ensure that such usage remains appropriately tied to the intent of the Order Types. If, as a result of such surveillance, the Exchange determines that the shortened Holding Periods do not serve their intended purposes, or adversely impact market quality, then the Exchange will seek to make further re-calibrations.

**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 Exchange believes that this proposal will promote the competitiveness of the Exchange by rendering its M-ELO and M-ELO+CB Order Types more attractive to participants.

The Exchange adopted the M-ELO and M-ELO+CB as pro-competitive measures intended to increase participation on the Exchange by allowing certain market participants that may currently be underserved on regulated exchanges to compete based on elements other than speed. The proposed change continues to achieve this purpose.

With shortened 10 millisecond Holding Periods, both M-ELOs and M-ELO+CBs will afford their users with a level of protection from information leakage and adverse selection that is not materially different from what they presently provide.<sup>11</sup> At the same time, the shortened Holding Period will increase opportunities to interact with other like-minded investors with longer time horizons while also lowering the opportunity costs for participants that utilize M-ELOs and M-ELO+CBs, particularly for securities that trade within the “Goldilocks” zone. In sum, the proposed changes will not burden competition, but instead may promote competition for liquidity in M-ELOs and M-ELO+CBs by broadening the circumstances in which market participants may find such Orders to be useful. With the proposed changes, market participants will be more likely to determine that the benefits of entering M-ELOs and M-ELO+CBs outweigh the risks of doing so.

The proposed change will not place a burden on competition among market venues, as any market may adopt an order type that operates similarly to a M-ELO or a M-ELO+CB with a 10 millisecond Holding Period.

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

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<sup>11</sup> See id.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-011 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-2020-011. 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-2020-011 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.<sup>12</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>12</sup> 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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**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 [one half of a second]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 Midpoint Extended Life Order must be entered with a size of at least one round lot. Any shares of a Midpoint Extended Life Order remaining after an execution that are less than a round lot will be cancelled by the System.
- A Time-in-Force other than IOC; provided that 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.
- 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 [one half-second]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 will be 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.
- 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.

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