

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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CHX. 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-CHX-2005-14 and should be submitted on or before July 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51810; File No. SR-NASD-2005-069]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Multiple Market Participant Identifiers

June 9, 2005.

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 May 25, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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

Nasdaq proposes to re-establish two pilot programs that provide market participants who execute transactions in Nasdaq and exchange-listed securities through its systems the ability to display trading interest using up to 10 individual MPIDs. The text of the proposed rule change is available on the Nasdaq's Web site (<http://www.nasdaq.com>), at the Nasdaq's Office of the Secretary, 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, Nasdaq 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. Nasdaq 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

As set forth in more detail below, Nasdaq is proposing to re-establish two pilot programs that inadvertently were permitted to lapse on March 1, 2005. On March 1, 2004, Nasdaq submitted to the Commission SR-NASD-2004-037<sup>5</sup> establishing the ability of ECNs and market makers in Nasdaq securities to use up to 10 individual Market Participant Identifiers ("MPIDs") to display attributable quotes and orders in the Nasdaq Quotation Montage. On July 29, 2004, Nasdaq submitted to the Commission SR-NASD-2004-097,<sup>6</sup> which created this same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. MPIDs for Nasdaq and exchange-listed securities are allocated and, when Nasdaq is reaching technological limits for displayed, attributable MPIDs, re-allocated using

the same procedures.<sup>7</sup> An additional MPID is known as a "Supplemental MPID" with a market maker's or ECN's first MPID being known as the "Primary MPID." On September 1, 2004, Nasdaq submitted SR-NASD-2004-134 which extended both pilots through March 1, 2005.<sup>8</sup> Nasdaq is proposing to re-establish the pilot programs through November 30, 2005.

The purpose of providing Supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. To the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems all market participants can be expected to benefit.<sup>9</sup>

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and SEC rules governing the trading of these securities. There are only two exceptions to this general principle. First, the continuous quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to Supplemental MPIDs; Second, only one MPID may be used to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, market makers and ECNs will have the same rights and obligations in using a Supplemental MPID to enter quotes and orders and to display quotations, as they do today.

<sup>7</sup> Under those procedures, rankings are based only on the volume associated with a member's Supplemental MPID—Primary MPIDs will be excluded from the calculation. The member with lowest volume using a Supplemental MPID will continue to be the first to lose the display privilege, but only with respect to the Supplemental MPID that caused the member to have the lowest ranking; the member will not lose its authority to use the Supplemental MPID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MPID with respect to other securities in which it is permitted to use the identifier. When re-allocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

<sup>8</sup> Securities Exchange Act Release No. 50434 (Sept. 23, 2004), 69 FR 58564 (Sept. 30, 2004).

<sup>9</sup> Nasdaq assesses no fees for the issuance or use of a Supplemental MPID other than the SEC-approved transaction fees set forth in NASD Rule 7010.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004).

<sup>6</sup> Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

The granting of Supplemental MPIDs is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID(s) to accomplish indirectly what they would be prohibited from doing directly through a single MPID. For example, members will not be permitted to use a Supplemental MPID to avoid their Manning or best execution obligations or their obligations under the SEC Order Handling Rules, the firm quote rule, the OATS rules, and the SEC order routing and execution quality disclosure rules. To the extent that the allocation of Supplemental MPIDs creates regulatory confusion or ambiguity, every inference will be drawn against the use of Supplemental MPIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market. Accordingly, if it is determined that a Supplemental exchange-listed MPID is being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID for all purposes for all securities.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>10</sup> in general and with Section 15A(b)(6) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse orders flows thereby improving overall system liquidity for the benefit of all market participants.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

Pursuant to Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>14</sup> Nasdaq has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as immediately operative.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> The proposal will make available a functionality that has been widely adopted by Nasdaq market participants and that has, in Nasdaq's view, improved liquidity and transparency within the Nasdaq market center since its inception. According to Nasdaq, to deny the waiver of the 30-day implementation delay would require widespread re-programming to decommission multiple MPIDs, imposing great cost on market participants. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NASD-2005-069 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-069. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-069 and should be submitted on or before July 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).