

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54307; File No. SR-NASD-2006-096)

August 11, 2006

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Additional Market Participant Identifier Functionality on the Alternative Display Facility

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 August 8, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

NASD is proposing to amend NASD Rule 4613A and adopt IM-4613A-1 to enable electronic communications network (“ECN”) members that post quotations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ NASD has requested the Commission to waive the 30-day pre-operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion infra Section III.

through the Alternative Display Facility (“ADF”) (i.e., Registered Reporting ADF ECNs), to request and receive multiple market participant identifiers (“MPIDs”) with which to enter multiple quotes/orders in the ADF and report trades through the ADF trade reporting facility, the Trade Reporting and Comparison Service (“TRACS”), pursuant to the NASD Rule 4000A Series. Below is the text of the proposed rule change. Proposed new language is in italics.

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4613A. Character of Quotations

(a) No Change.

(b) Primary and Additional MPIDs

(1) The first Market Participant Identifier (“MPID”) issued to an NASD Market Participant shall be referred to as the NASD Market Participant’s “Primary MPID.” For a pilot period ending January 26, 2007, a Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security (as defined in NASD Rule 4100A). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(b) through (e) renumbered as (c) through (f).

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IM-4613A-1 Procedures For Allocation of Multiple MPIDs

NASD considers the issuance of, the display of, and the trade reporting with Additional MPIDs to be a privilege and not a right. NASD has developed the following

method for allocating the privilege of receiving, displaying, and trade reporting with Additional MPIDs in an orderly, predictable, and fair manner. While NASD does not intend to place a numerical limit on the number of Additional MPIDs it may grant to Registered Reporting ADF ECNs, given the agent business model of ECNs, NASD does not anticipate the granting of many additional MPIDs to Registered Reporting ADF ECNs.

As described in Rule 4613A, NASD will automatically designate a Registered Reporting ADF ECN's first MPID as a "Primary MPID." Additional MPIDs will be designated as such. Registered Reporting ADF ECNs are required to use their Primary MPID in accordance with the requirements of NASD Rule 4613A as well as all existing requirements for the use of MPIDs in NASD systems and under NASD rules. Each of an ECN's MPID will be subject to the requirements of NASD Rule 4623A.

If it is determined that one or more Additional MPIDs are being used improperly, NASD staff retains full discretion to limit or withdraw its grant of the Additional MPID(s) for all purposes for all securities. In addition, if a Registered Reporting ADF ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use an Additional MPID for any purpose in that security.

The first priority of NASD's method for allocating the privilege of displaying and trade reporting with Additional MPIDs is that each Registered Reporting ADF ECN should be permitted to display quotations and report trades under a Primary MPID before any is permitted to display additional quotations under and report trades with Additional MPIDs. If all requests for Primary MPIDs have been satisfied, NASD will then register

Additional MPIDs on a first-come-first-served basis, consistent with the procedures listed below.

A Registered Reporting ADF ECN shall contact NASD in writing setting forth the bona fide business and/or regulatory reasons for requesting an Additional MPID. NASD will consider the business and/or regulatory reasons demonstrated by the Registered Reporting ADF ECN and promptly respond to the Registered Reporting ADF ECN. If an Additional MPID is granted, it will be subject to the same requirements applicable to a Primary MPID. NASD staff retains full discretion to limit or withdraw the Additional MPID privileges of a Registered Reporting ADF ECN.

A Registered Reporting ADF ECN that posts a quotation through either a Primary MPID or Additional MPID and reports a trade to TRACS as a result of such a posted quotation must utilize the corresponding Primary MPID or Additional MPID for reporting purposes through which the quotation was originally posted (i.e., Registered Reporting ADF ECNs must use the same MPID for TRACS trade reporting as was used for ADF quotation posting).

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

In its filing with the Commission, NASD 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. NASD 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

An NASD member that registers as a market maker or ECN is currently permitted to enter one two-sided quotation per security in the ADF and is assigned a unique MPID with which to enter such quotations. The NASD 4600A Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the ADF via their MPIDs.

NASD proposes to amend NASD Rule 4613A and adopt IM-4613A-1 to permit NASD Registered Reporting ADF ECNs to request the use of additional MPIDs for a pilot period ending January 26, 2007.⁶ At this time only ECNs have been certified for posting quotations through the ADF and at no time has a registered market maker been certified for the ADF. Accordingly, NASD believes it appropriate to limit the scope of this proposed rule to Registered Reporting ADF ECNs.⁷ An ECN would be entitled to request additional MPIDs for displaying quotes/orders and reporting trades through the ADF trade reporting facility, TRACS, pursuant to the NASD Rule 4000A Series.

Registered Reporting ADF ECNs that are permitted the use of additional MPIDs for displaying quotes/orders would be subject to the same rules applicable to the

⁶ This date coincides with the expiration of the current ADF pilot period. See Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). Accordingly, the provisions set forth in Rule 4613A and IM-4613A-1 will be extended with any extension of an ADF pilot period.

⁷ In support of the requirement under the Act that NASD rules not result in unfair discrimination between members (see 15 U.S.C. 78o-(b)(6)), NASD commits to expand additional MPID privilege functionality to Registered Reporting ADF Market Makers at such time that at least one broker-dealer NASD member becomes certified for posting quotations through the ADF and demonstrates a bona fide business and/or regulatory need for additional MPID functionality.

members' first quotation. In other words, ECNs that display one or more additional quotes/orders would be required to comply with all rules applicable to ECNs in their display of quotes/orders.

NASD believes that the ability to enter quotes and orders and to display quotations under an additional MPID would potentially carry with it similar benefits that have resulted from the supplemental MPID Program of the Nasdaq Stock Market LLC ("Nasdaq").⁸ Specifically, the introduction of additional MPIDs on the ADF may enable Registered Reporting ADF ECNs to contribute more liquidity to the market, add to the transparency of trading interest, and better serve the needs of investors and the needs of Registered Reporting ADF ECNs themselves.⁹ As noted above, Registered Reporting ADF ECNs that use an additional MPID would be required to comply with all NASD and Commission rules applicable to their current use of a single MPID. Registered Reporting ADF ECNs would be prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. To the extent that the allocation of additional MPIDs were to create regulatory confusion or ambiguity or would diminish the quality or rigor of the regulation of the over-the-counter ("OTC") market, every inference would be drawn against the use of additional MPIDs. Moreover, pursuant to the proposed rule and interpretive material, NASD staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted

⁸ See Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). See also Securities Exchange Act Release No. 53192 (January 30, 2006), 71 FR 6302 (February 4, 2006).

⁹ NASD will assess no fees for the issuance or use of an additional MPID, other than the Commission-approved fees set forth in NASD Rule 7010.

the additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with these requirements because it will provide a process by which ECNs can request, and NASD can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF.

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

NASD 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.

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 proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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

¹⁰ 15 U.S.C. 78o-3(b)(6).

investors and the public interest, the proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹¹

Pursuant to Rule 19b-4(f)(6)(iii),¹² a proposed “non-controversial” rule change does not become operative prior to 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. NASD has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹³ The proposal will extend for ECN participants on the ADF a functionality that has been widely available to ECNs on Nasdaq through a pilot program. Allowing this proposal to become operative immediately is consistent with the protection of investors and the public interest because the benefits of the pilot and the use of multiple MPIDs can continue without undue disruption. For this reason, the Commission designates the proposed rule change 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-096 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-096. 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 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-2006-096 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).