

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57452; File No. SR-NASDAQ-2008-004)

March 7, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Related to Supplemental Market Participant Identifiers

I. Introduction

On January 9, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to make permanent the pilot program that allows market makers and Electronic Communication Networks (“ECNs”) to obtain supplemental market participant identifiers (“MPIDs”). In addition, Nasdaq proposes to remove any restrictions on the number of MPIDs a market participant may request for displaying attributable quotes or orders. The proposed rule change was published for comment in the Federal Register on February 1, 2008.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

Nasdaq proposes to make permanent the pilot program incorporated in Nasdaq Rule 4613(a)(2) that allows market makers and ECNs to obtain supplemental MPIDs. The rule has operated as a temporary pilot since it was first adopted in June 2003 and since that time, Nasdaq

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57212 (January 28, 2008), 73 FR 6229 (“Notice”).

continued to apply the procedures set forth in the rule and the related interpretive material.<sup>4</sup> In accordance with the pilot program, market makers and ECNs can be issued a maximum of nine supplemental MPIDs. Nasdaq proposes to remove the current restriction that limits the number of supplemental MPIDs that market makers and ECNs can request for displaying attributable quotes or orders. In addition, Nasdaq proposes to remove IM-4613, which sets forth the procedures for allocating supplemental MPIDs.

Nasdaq's proposal will prohibit market makers and ECNs from using a supplemental MPID to violate Exchange or Commission rules.<sup>5</sup> If it is determined that a supplemental MPID is being used improperly, Nasdaq will withdraw its grant of the supplemental MPID for all purposes for all securities. In addition, if a market maker or ECN fails to fulfill the conditions appurtenant to its primary MPID (e.g., by being placed into an unexcused withdrawal), it will not be permitted to use any supplemental MPID for any purpose in that security.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes that the proposed rule change is consistent

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<sup>4</sup> See Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). See also IM-4613 – Procedures for Allocation of Second Displayable MPIDs. According to Nasdaq, the pilot inadvertently was permitted to lapse on November 30, 2006.

<sup>5</sup> Members will be prohibited from using a supplemental MPID to avoid their Manning obligations under IM-2110-2, best execution obligations under Nasdaq Rule 2320, or their obligations under the Commission's Order Handling Rules. Members will be required to continue to comply with the firm quote rule, the OATS rules, and the Commission's order routing and execution quality disclosure rules. See Notice, *supra* note 3, at 6229-30.

<sup>6</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

with Section 6(b)(5) of the Act,<sup>7</sup> 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.

The Commission believes that the proposal to make permanent the pilot program that allows market makers and ECNs to obtain supplemental MPIDs is consistent with the Act. The proposal should provide market participants with flexibility to organize diverse order flows from customers and to route orders from different trading desks and units within their organizations.

The Exchange also proposes to remove any restrictions on the number of MPIDs a market participant may request for displaying attributable quotes or orders. According to Nasdaq, this restriction was adopted due to technological limitations. The Exchange has represented that this technological limitation no longer exists.<sup>8</sup> In addition, Nasdaq proposes to remove IM-4613, which sets forth the procedures for allocating supplemental MPIDs. This method of allocating supplemental MPIDs was necessary due to the limited number of available MPIDs. The removal of Nasdaq's technological limitation on the number of MPIDs for a given security makes the procedures unnecessary.

The Commission notes that Nasdaq represents that a supplemental MPID would be withdrawn for all purposes and for all securities if it were to be determined that such supplemental MPID was being used improperly.<sup>9</sup> In addition, Nasdaq represents that a market maker or ECN will be prohibited from using any supplemental MPID for any purpose in a

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Notice, supra note 3, at 6229.

<sup>9</sup> See Notice, supra note 3, at 6230.

security, if it fails to fulfill the conditions appurtenant to its primary MPID for such security.<sup>10</sup>

In the Commission's view, these procedures should ensure that market makers and ECNs utilize MPIDs in accordance with Exchange rules.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASDAQ-2008-004) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> Id.  
<sup>11</sup> 15 U.S.C. 78s(b)(2).  
<sup>12</sup> 17 CFR 200.30-3(a)(12).