

*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-2006-016 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NASD-2006-016. 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-2006-016 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-1614 Filed 2-6-06; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53192; File No. SR-NASD-2006-004]

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

January 30, 2006.

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 January 12, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("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 the proposal effective upon filing with the Commission.<sup>5</sup> 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 continue 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 Market Participant Identifiers ("MPIDs"). The text of the proposed rule change is available at NASD, the NASD Web site, and at the Commission.

**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 December 1, 2005. On March 1, 2004, Nasdaq filed SR-NASD-2004-037<sup>6</sup> with the Commission, establishing the ability of ECNs and market makers in Nasdaq securities to use up to 10 individual MPIDs to display attributable quotes and orders in the Nasdaq Quotation Montage. On July 29, 2004, Nasdaq filed SR-NASD-2004-097<sup>7</sup> with the Commission, 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>8</sup> Additional MPIDs are known as a "Supplemental MPID" with a market maker's or ECN's first MPID being known as the "Primary MPID." Nasdaq subsequently filed SR-NASD-2004-134<sup>9</sup> with the Commission, which extended both pilots through March 1, 2005, and SR-NASD-2005-069,<sup>10</sup> which extended the pilots through November 30, 2005. Nasdaq is proposing to re-establish the pilot programs through November 30, 2006.

<sup>6</sup> Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004).

<sup>7</sup> Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

<sup>8</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 it 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 reallocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

<sup>9</sup> Securities Exchange Act Release No. 50434 (September 23, 2004), 69 FR 58564 (September 30, 2004).

<sup>10</sup> Securities Exchange Act Release No. 51810 (June 9, 2005), 70 FR 34803 (June 15, 2005).

<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> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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>11</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 Commission 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 NASD Rule 5220(e), as well as the procedures described in NASD 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.

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 or Supplemental MPIDs 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 Commission's Order Handling Rules, the firm quote rule, the OATS rules, and the Commission 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>12</sup> in general, and with section 15A(b)(6) of the Act,<sup>13</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, Nasdaq believes the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse order 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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

At any time within 60 days of the filing of such 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.

Nasdaq has asked that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>16</sup> The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow these lapsed pilots to be reinstated as quickly as possible. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>17</sup>

## 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 No. SR-NASD-2006-004 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NASD-2006-004. 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

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> Nasdaq assesses no fees for the issuance or use of Supplemental MPIDs other than the Commission-approved transaction fees set forth in NASD Rule 7010.

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

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-NASD-2006-004 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-1617 Filed 2-6-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53195; File No. SR-NSX-2006-02]

### Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 11.3 To Allow for Sub-Penny Quoting in Certain Securities

January 30, 2006.

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 January 30, 2006, the National Stock Exchange<sup>SM</sup> ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal 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 the proposal 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 the Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 11.3 to allow for sub-penny quoting in securities that are

listed on the Nasdaq Stock Market where such quotes are priced less than \$1.00 per share, and in any other security approved by the Commission for sub-penny quoting. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny quoting in securities whose quotes are at \$1.00 or more per share, except to the extent otherwise approved by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized*. Proposed deletions are indicated in [brackets].<sup>5</sup>

#### RULES OF NATIONAL STOCK EXCHANGE

\* \* \* \* \*

#### CHAPTER XI

##### Trading Rules

\* \* \* \* \*

##### Rule 11.3 Price Variations

Bids, [or] offers, *orders or indications of interests* in [stocks] *securities* traded on the Exchange shall not be made [at a] *in an increment* smaller [variation] than:

(i) *\$0.01* [per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount.] *if those bids, offers or indications of interests are priced equal to or greater than \$1.00 per share; or*

(ii) *\$0.0001* *if those bids, offers or indications of interests are priced less than \$1.00 per share and the security is listed on the Nasdaq Stock Market and is trading on the Exchange; or*

(iii) *Any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of SEC Rule 612(a) or 612(b).*

\* \* \* \* \*

#### 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

Exchange Rule 11.3 currently provides that bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than \$0.01 per share. Rule 612 of Regulation NMS under the Act provides, in relevant part, that no national securities exchange shall "display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share."<sup>6</sup> Rule 612 also prohibits national securities exchanges from displaying, ranking or accepting bids, offers, orders, or indications of interest priced in increments smaller than \$0.0001 if the bid, offer, order, or indication of interest is priced less than \$1.00 per share.<sup>7</sup> Finally, Rule 612(c) of Regulation NMS provides that the Commission may grant exemptions from the minimum price increment requirements of Rule 612(a) and 612(b) "if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."<sup>8</sup> The compliance date for Rule 612 is January 31, 2006 (the "Compliance Date").<sup>9</sup>

The Exchange is now proposing to prohibit the submission of bids, offers, orders, or indications of interest priced in increments smaller than (i) \$0.0001 if the bid, offer, order, or indication of interest is priced less than \$1.00 per share on securities that are listed in the Nasdaq Stock Market and traded on the Exchange, or (ii) the minimum price increment established by the Commission for any security that has been granted an exemption from the minimum price increment requirement of Rule 612(a) or 612(b) of Regulation NMS. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny orders and quotes priced at \$1.00 or more per share, except to the extent otherwise approved by the Commission, and will maintain a minimum increment of \$0.01 for any security traded on the Exchange and listed by the New York Stock Exchange or American Stock Exchange.

<sup>18</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> Certain technical changes to the rule text have been made pursuant to a telephone conversation between James C. Yong, Chief Regulatory Officer, NSX and Sara Gillis, Attorney, Division of Market Regulation, Commission on January 30, 2006.

<sup>6</sup> 17 CFR 242.612(a).

<sup>7</sup> 17 CFR 242.612(b).

<sup>8</sup> 17 CFR 242.612(c).

<sup>9</sup> See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).