

date of the Listing Council's decision in the matter. As a result, while the maximum cumulative exception these bodies can grant under these provisions is 360 days from the date of the Staff Determination, Nasdaq notes in its filing that the actual amount of time can vary from issuer to issuer based on how quickly the issuer is scheduled for a hearing and the speed with which the Panel and Listing Council decisions are prepared. The Exchange believes that this variability may create uncertainty for Nasdaq-listed companies and their investors regarding the maximum amount of time available under an exception.

Nasdaq therefore proposes to modify the computation of the maximum Exception Period permitted under Rule 4802(b). The proposed rule change would not, however, increase the maximum time available under the process. The Exchange proposes that the maximum Exception Period that a Panel could provide would be 180 days from the date of the Staff Determination, and the maximum Exception Period that the Listing Council could provide would be 360 days from the date of the Staff Determination. As under the current rules, these adjudicatory bodies would continue to be able to grant an issuer a shorter Exception Period, or no Exception Period at all, based on their analysis of the applicable facts and circumstances.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>4</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.<sup>5</sup> The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,<sup>6</sup> in that it provides a fair procedure for the prohibition or limitation by the Exchange of any person with respect to

access to services offered by the Exchange.

The Commission believes that it is essential for a national securities exchange to have an efficient and fair delisting process for issuers that are not in compliance with Exchange rules and/or the Act. The Commission believes that the proposed rule change has the effect of providing for a maximum Exception Period that is consistent for all issuers and not dependent on the timing of the adjudicatory decision, while at the same time does not extend the overall maximum time allotted for a non-compliant issuer to go through the Nasdaq's current delisting process. Specifically, under the proposal, rather than being dependent on variable events, such as how quickly an issuer is scheduled for a hearing and how promptly the Panel and Listing Counsel issue their decisions, the maximum allowable Exception Period will, in all cases, be based on the date of the Staff Determination.

The Commission recognizes that certain individual issuers that have already gone through the Exchange delisting process might have been granted a longer Exception Period had they gone through the process under the proposed new rules. Nevertheless, the Commission emphasizes that the proposed rules do not in any way increase the maximum time that could potentially be available to issuers under Nasdaq's existing delisting process. Further, the Commission believes the proposed rule change should help to ensure fair application of the rule to all issuers, consistent with Section 6(b)(7) of the Act,<sup>7</sup> and should eliminate some uncertainty for issuers regarding the maximum time that may be available under an Exception Period.

Finally, the Commission notes that the new rules provide that the Panel and Listing Counsel can allow an Exception Period not to exceed 180 days or 360 days from the Staff Determination, respectively. Thus, there may still be variation in the Exception Periods that are granted to issuers, because the Panel and Listing Counsel retain the authority to grant an issuer a shorter Exception Period than the maximum allowable period or no Exception Period at all. In this regard, the Commission expects the Panel and Listing Counsel to only grant an Exception Period to those issuers who are likely to regain compliance within the time frame allotted and notes that there is no particular right under Nasdaq rules for issuers to be allotted any particular Exception Period. The Commission expects Nasdaq to continue

to delist issuers, who are not meeting Nasdaq continued listing standards, or complying with Nasdaq rules and/or the Act, in a prompt, efficient and fair manner in furtherance of Sections 6(b)(5) and 6(b)(7) of the Act.<sup>8</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASDAQ-2007-096) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57452; File No. SR-NASDAQ-2008-004]

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

March 7, 2008.

#### 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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(7).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5), 78f(b)(7).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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> See Securities Exchange Act Release No. 57212 (January 28, 2008), 73 FR 6229 ("Notice").

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

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

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57448; File No. SR-NSX-2008-05]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Consolidating into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

March 6, 2008.

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 March 6, 2008, the National Stock Exchange, Inc. ("Exchange" or "NSX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 6, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges ("UTP") that have been established in various new products proposals previously approved by the Commission. The text of the proposed rule change is available at the Exchange's principal office, on the Exchange's Web site (<http://www.nsx.com>) 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, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

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

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

<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).

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