

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

The proposed rule would enable members that are registered as market makers or electronic communications networks ("ECNs") to request and receive a second market participant identifier ("MMID") with which to enter a second Attributable Quote/Order in the Nasdaq Quotation Montage or to enter non-attributable orders into SIZE in SuperMontage. The rule change would be established as a two-month pilot program currently scheduled to begin on July 1, 2003. Nasdaq will issue a Head Trader Alert publicly announcing the precise start and end dates of the pilot. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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4613.Character of Quotations

(a) [Two-Sided] Quotation[s] Requirements and Obligations

(1) *Two-Sided Quote Obligation.* For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) No Change.

(B) No Change.

(2) *For a two-month pilot period, market makers and ECNs may request the use of a second MMID. A market maker may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of a second MMID for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its first MMID in any security shall not be permitted to use the second MMID for any purpose in that security.*

(3) *Members that are permitted the use of second MMIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) The continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' second MMIDs; and (b) the second MMID may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.*

(b)–(e) No Change.

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IM-4613-1—Procedures For Allocation of Second Displayable MMIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of a second MMID to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying a second MMID in an orderly, predictable, and fair manner on a stock-by-stock basis.

Nasdaq will automatically designate a market maker's first MMID as a "Primary MMID" and its second MMID as a "Secondary MMID." Market makers are required to use their Primary MMID in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of MMIDs in Nasdaq systems. Market makers' use of Secondary MMIDs are subject to the requirements set forth in NASD Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under NASD Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to the secondary MMID. Nasdaq will automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID will be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members may also use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Secondary MMIDs to

display quotations in Nasdaq systems. If it is determined that a Secondary MMID is being used improperly, Nasdaq will withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary MMID (e.g., by being placed into an unexcused withdrawal), it may not use the Secondary MMID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying a second MMID is that each market maker or ECN should be permitted to register to display a single quotation in a security under its Primary MMID before any is permitted to register to display a second quotation under a Secondary MMID. Each market maker or ECN may register its Primary MMID to display a quotation in a security, on a first-come-first-served basis. After each market maker or ECN has been permitted to register its Primary MMID to display quotations in a stock, Nasdaq will then register Secondary MMIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within five MMIDs of its maximum in a particular security, Nasdaq will temporarily cease registering additional Secondary MMIDs in that security and reserve those five remaining MMIDs for members that may register their Primary MMID in that stock in the future. If Nasdaq allocates those reserved MMIDs to members requesting Primary MMIDs and then receives additional requests for Primary MMIDs, it will use the procedure described below to reallocate Secondary MMIDs to members requesting Primary MMIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has two MMIDs in the stock according to their monthly volume of trading, based on the lower volume of that participant's two MMIDs. Nasdaq will withdraw the second MMID display privilege of the lowest volume participant in that ranking and assign that privilege to the first member that requested the ability to display a second quotation. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) will lose the ability to display a second quotation in that security for that month, but will still be permitted to use the second MMID to enter non-attributable orders into SIZE