

would not apply to the Secondary MMID. Nasdaq would automatically designate each ECN's MMIDs as Primary and Secondary. Each ECN MMID would be subject to the requirements of NASD Rule 4623 and the existing ECN requirements of the NASD Rule 4700 Series. Members would also be permitted to use a Secondary MMID to enter non-attributable orders into SIZE.

Nasdaq represents that it, 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 were to be determined that a Secondary MMID was being used improperly, Nasdaq would withdraw its grant of the Secondary MMID for all purposes for all securities. In addition, if a market maker or ECN were no longer to fulfill the conditions appurtenant to its Primary MMID (*e.g.*, by being placed into an unexcused withdrawal), it would not be permitted to 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 would 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 would 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 were to come within five MMIDs of its maximum in a particular security, Nasdaq would 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 were to allocate those reserved MMIDs to members requesting Primary MMIDs and were then to receive additional requests for Primary MMIDs, it would 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 would 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 would 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 would repeat this process as many times as needed to accommodate all pending requests for Primary and Secondary MMIDs. The low-ranking member(s) would lose the ability to display a second quotation in that security for that month, but would still be permitted to use the second MMID to enter non-attributable orders into SIZE for that security or any other, and to display a second quote in any stocks in which it is properly registered to do so, subject to the conditions described in the rule and this interpretive material.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ which requires, among other things, that a registered national securities association's rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements because it will facilitate transactions in securities, remove impediments to a free and open market, and protect investors by improving the transparency and efficiency of transactions.

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.

⁴ 15 U.S.C. 78o-3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by Nasdaq as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶ Consequently, because the foregoing proposed 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,⁷ and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ Nasdaq withdrew its request that the Commission waive the 30-day operative delay in view of the fact that the 30-day operative delay will have expired prior to the scheduled start date of the pilot program, July 1, 2003. Telephone conversation between Jeffrey S. Davis, Associate General Counsel Nasdaq, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (May 30, 2003).