

# Notice to Members

AUGUST 2006

## SUGGESTED ROUTING

Legal and Compliance  
Senior Management  
Operations  
Systems  
Trading

## KEY TOPICS

Alternative Display Facility  
IM-4613A-1  
Multiple Market Participant  
Identifiers  
Registered Reporting ADF ECNs  
Rule 4613A

## GUIDANCE

### Alternative Display Facility

#### Pilot Program to Permit Additional Market Participant Identifier Functionality on the Alternative Display Facility

#### Executive Summary

On August 8, 2006, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend Rule 4613A and adopt IM-4613A-1 to enable ECN members that post quotations through the Alternative Display Facility (ADF) (*i.e.*, Registered Reporting ADF ECNs) to request and receive multiple market participant identifiers (MPIDs) with which to enter multiple quotes/orders in the ADF and report trades through the ADF Trade Reporting and Comparison Service (TRACS), pursuant to the Rule 4000A Series.<sup>1</sup>

Rule 4613A, as amended, and new IM-4613A-1 are set forth in Attachment A of this *Notice*. The effective date and the implementation date of the amendments was August 8, 2006.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to Elliot Levine, Associate Vice President, Transparency Services, at (202) 728-8405; Chris Stone, Associate Chief Counsel, Transparency Services, at (202) 728-8457; or Kathleen O'Mara, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8056.

#### Background and Discussion

An NASD member that registers as a market maker or ECN is currently permitted to enter one two-sided quotation per security in the ADF and is assigned a unique MPID with which to enter such quotations. The NASD 4600A Rule Series governs the character of such quotations and the rights and obligations of members that display quotations in the ADF via their MPIDs.

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NASD has amended Rule 4613A and adopted IM-4613A-1 to permit Registered Reporting ADF ECNs to request the use of additional MPIDs for a pilot period ending January 26, 2007.<sup>2</sup> At this time, only ECNs have been certified for posting quotations through the ADF, and at no time has a registered market maker been certified for the ADF. Accordingly, the scope of this rule is limited to Registered Reporting ADF ECNs.<sup>3</sup> An ECN will be entitled to request additional MPIDs for displaying quotes/orders and reporting trades through the ADF trade reporting facility, TRACS, pursuant to the Rule 4000A Series.<sup>4</sup>

Registered Reporting ADF ECNs that are permitted to use an additional MPID for displaying quotes/orders are subject to the same rules applicable to the members' first quotation. In other words, ECNs that display one or more additional quotes/orders are required to comply with all NASD and SEC rules applicable to ECNs in their display of quotes/orders. Registered Reporting ADF ECNs are prohibited from using an additional MPID to accomplish indirectly what they are prohibited from doing directly through their Primary MPID. To the extent that the allocation of additional MPIDs were to create regulatory confusion or ambiguity or would diminish the quality or rigor of the regulation of the over-the-counter market, every inference would be drawn against the use of additional MPIDs. Moreover, pursuant to the rule and related interpretive material, NASD staff has full discretion to determine whether a bona fide regulatory and/or business need exists for being granted the additional MPID privilege and to limit or withdraw the additional MPID display privilege at any time.

The amendments to Rule 4613A and IM-4613A-1 became effective August 8, 2006.

## Endnotes

- 1 Exchange Act Release No. 54307 (August 11, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-096). Under Section 19(b) of the Securities Exchange Act of 1934 (Act), the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 This date coincides with the expiration of the current ADF pilot period. See Exchange Act Release No. 53699 (April 21, 2006). Accordingly, the provisions set forth in Rule 4613A and IM-4613A-1 will be extended with any extension of an ADF pilot period.
- 3 NASD will expand additional MPID privilege functionality to Registered Reporting ADF Market Makers at such time that at least one broker-dealer NASD member becomes certified for posting quotations through the ADF and demonstrates a bona fide business and/or regulatory need for additional MPID functionality.
- 4 NASD will not assess fees for the issuance or use of an additional MPID, other than the SEC-approved fees set forth in NASD Rule 7010.

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## ATTACHMENT A

New language is underlined.

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### 4613A. Character of Quotations

(a) No Change.

**(b) Primary and Additional MPIDs**

(1) The first Market Participant Identifier ("MPID") issued to an NASD Market Participant shall be referred to as the NASD Market Participant's "Primary MPID." For a pilot period ending January 26, 2007, a Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security (as defined in NASD Rule 4100A). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(b) through (e) renumbered as (c) through (f).

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#### **IM-4613A-1 Procedures For Allocation of Multiple MPIDs**

NASD considers the issuance of, the display of, and the trade reporting with Additional MPIDs to be a privilege and not a right. NASD has developed the following method for allocating the privilege of receiving, displaying, and trade reporting with Additional MPIDs in an orderly, predictable, and fair manner. While NASD does not intend to place a numerical limit on the number of Additional MPIDs it may grant to Registered Reporting ADF ECNs, given the agent business model of ECNs, NASD does not anticipate the granting of many additional MPIDs to Registered Reporting ADF ECNs.

As described in Rule 4613A, NASD will automatically designate a Registered Reporting ADF ECN's first MPID as a "Primary MPID." Additional MPIDs will be designated as such. Registered Reporting ADF ECNs are required to use their Primary MPID in accordance with the requirements of NASD Rule 4613A as well as all existing requirements for the use of MPIDs in NASD systems and under NASD rules. Each of an ECN's MPID will be subject to the requirements of NASD Rule 4623A.

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If it is determined that one or more Additional MPIDs are being used improperly, NASD staff retains full discretion to limit or withdraw its grant of the Additional MPID(s) for all purposes for all securities. In addition, if a Registered Reporting ADF ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use an Additional MPID for any purpose in that security.

The first priority of NASD's method for allocating the privilege of displaying and trade reporting with Additional MPIDs is that each Registered Reporting ADF ECN should be permitted to display quotations and report trades under a Primary MPID before any is permitted to display additional quotations under and report trades with Additional MPIDs. If all requests for Primary MPIDs have been satisfied, NASD will then register Additional MPIDs on a first-come-first-served basis, consistent with the procedures listed below.

A Registered Reporting ADF ECN shall contact NASD in writing setting forth the bona fide business and/or regulatory reasons for requesting an Additional MPID. NASD will consider the business and/or regulatory reasons demonstrated by the Registered Reporting ADF ECN and promptly respond to the Registered Reporting ADF ECN. If an Additional MPID is granted, it will be subject to the same requirements applicable to a Primary MPID. NASD staff retains full discretion to limit or withdraw the Additional MPID privileges of a Registered Reporting ADF ECN.

A Registered Reporting ADF ECN that posts a quotation through either a Primary MPID or Additional MPID and reports a trade to TRACS as a result of such a posted quotation must utilize the corresponding Primary MPID or Additional MPID for reporting purposes through which the quotation was originally posted (i.e., Registered Reporting ADF ECNs must use the same MPID for TRACS trade reporting as was used for ADF quotation posting).

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