

as a specialized small business investment company under the SBIA. PMCIC uses long-term funds provided by the SBA through the issuance of debentures, together with its own capital, to provide long-term collateralized loans to eligible small businesses owned by disadvantaged persons. PMCIC funds its lending operations by issuing fixed-rate, long-term subordinated debentures, which are guaranteed and sold by the SBA. PMCIC also funds its operations by selling nonvoting preferred stock to the SBA. FW and WFCC filed Forms N-8A notifying the Commission of their registration under section 8(a) of the Act on June 24, 1983. PMCIC filed Form N-8A notifying the Commission of its registration under section 8(a) of the Act on February 23, 1987. FW, WFCC, and PMCIC are each registered under the Act as a closed-end management investment company.

2. Prior to February 29, 2004, FW, WFCC and PMCIC were subsidiaries of PMC Capital, Inc. ("PMC Capital"). PMC Capital, a Florida corporation, was a closed-end management investment company that elected to operate as a business development company under the Act. On February 29, 2004, PMC Capital merged with and into PMC Commercial Trust ("PMC Commercial"), a Texas real estate investment trust, with PMC Commercial continuing as the surviving entity.<sup>1</sup> FW, WFCC and PMCIC are now subsidiaries of PMC Commercial, which commenced operating the businesses of PMC Capital and its subsidiaries as of the date of the merger.

*Applicants' Legal Analysis:* 1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons, and which is not making and does not presently propose to make a public offering of its securities, is not an investment company within the meaning of the Act.

3. Applicants state that, under section 3(c)(1) of the Act, FW, WFCC, and PMCIC are not investment companies because PMC Commercial owns all of

the outstanding securities of FW, and PMC Commercial and the SBA own all of the outstanding securities of WFCC and PMCIC, and the applicants do not presently propose to make a public offering of their securities.

4. Each applicant states that it is not a party to any litigation or administrative proceedings.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50140; File No. SR-NASD-2004-097]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Multiple Market Participant Identifiers for Exchange Listed Securities

August 3, 2004.

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 June 25, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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, II, and III below, which Items have been prepared by the Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(ii) 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. On July 29, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<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)(ii).

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

<sup>5</sup> See letter from Mary M. Dunbar, Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 28, 2004. Amendment No. 1 makes technical amendments to the proposed rule change.

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

Nasdaq proposes to provide market participants who execute transactions in exchange-listed securities<sup>6</sup> through its systems the ability to display trading interest using up to ten individual MPIDs. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>7</sup>

\* \* \* \* \*

#### 4613. Character of Quotations

##### (a) Quotation 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] MPID") 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) The first [MMID] MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary [MMID] MPID." For a six-month pilot period beginning March 1, 2004, market makers and ECNs may request the use of additional [MMIDs] MPIDs that shall be referred to as "Supplemental [MMIDs] MPIDs." Market makers and ECNs may be issued up to nine Supplemental [MMIDs] MPIDs. A market maker may request the use of Supplemental [MMIDs] MPIDs 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 Supplemental [MMIDs] MPIDs 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

<sup>6</sup> Exchange-listed securities include all CQS eligible securities and all securities eligible for trading via the Intermarket Trading System ("ITS") and those included in NASD Rule 5210(c) and NASD Rule 6410(d). See NASD Rule 4701(s).

<sup>7</sup> The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at [www.nasdr.com](http://www.nasdr.com).

<sup>1</sup> See PMC Capital, Inc., Investment Company Act Release Nos. 26344 (Jan. 30, 2004) (notice) and 26358 (Feb. 25, 2004) (order).

Primary [MMID] *MPID* in any security shall not be permitted to use a Supplemental [MMID] *MPID* for any purpose in that security.

(3) [Members] *Market makers and ECNs* that are permitted the use of Supplemental [MMIDs] *MPIDs* 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' Supplemental [MMIDs] *MPIDs*; and (b) Supplemental [MMIDs] *MPIDs* 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.

\* \* \* \* \*

#### IM-4613-1—Procedures For Allocation of Second Displayable *MPIDs*

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 Supplemental [MMIDs] *MPIDs* to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental [MMIDs] *MPIDs* with attributable display privileges ("display privileges") in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 4613, Nasdaq will automatically designate a market maker's first [MMID] *MPID* as a "Primary [MMID] *MPID*" and any additional [MMIDs] *MPIDs* as "Supplemental [MMIDs] *MPIDs*." Market makers are required to use their Primary [MMID] *MPID* in accordance with the requirements of NASD Rule 4613(a)(1) above, as well as all existing requirements for the use of [MMIDs] *MPIDs* in Nasdaq systems. Market makers' use of Supplemental [MMIDs] *MPIDs* 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 Supplemental [MMIDs] *MPIDs*. Nasdaq will automatically designate each ECN's [MMIDs] *MPIDs* as Primary and Supplemental. Each ECN [MMID] *MPID*

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

The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental [MMID] *MPID* is that each market maker or ECN should be permitted to register to display a single quotation in a security under a Primary [MMID] *MPID* before any is permitted to register to display additional quotations under Supplemental [MMIDs] *MPIDs*. If all requests for Primary *MPIDs* have been satisfied, Nasdaq will then register Supplemental [MMIDs] *MPIDs* 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 ten [MMIDs] *MPIDs* with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental [MMIDs] *MPIDs* with display privileges in that security and reserve those ten remaining display privileges for members that may register their Primary [MMID] *MPID* in that stock in the future. If Nasdaq allocates those reserved display privileges to members requesting Primary [MMIDs] *MPIDs* and then receives additional requests for Primary [MMIDs] *MPIDs*, it will use the procedure described below to re-allocate display privileges to members requesting Primary [MMIDs] *MPIDs*.

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 more than one Supplemental [MMID] *MPID* with display privileges in the stock according to their monthly volume of trading, based on the volume of that participant's least used

Supplemental [MMID] *MPID* with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental [MMID] *MPID* of the participant in that ranking and assign that privilege to the first member that requested a Primary [MMID] *MPID* or Supplemental [MMID] *MPID*, with Primary [MMIDs] *MPIDs* always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental [MMIDs] *MPIDs*. If after following this process (or at the outset of the allocation process) no member has more than one Supplemental [MMID] *MPID* with display privileges, members will be ranked based upon the volume associated with their Supplemental [MMID] *MPID*, and Nasdaq will withdraw the display privilege from the member with the lowest volume Supplemental [MMID] *MPID*.

Members that lose the display privilege associated with a Supplemental [MMID] *MPID* will still be permitted to use the Supplemental [MMID] *MPID* to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in any stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental [MMIDs] *MPIDs* to those members requesting Primary or Supplemental [MMIDs] *MPIDs*. For example, assume with respect to security WXYZ member A has nine Supplemental [MMIDs] *MPIDs* with display privileges (which is the maximum - 1 Primary [MMID] *MPID* + 9 Supplemental [MMIDs] *MPIDs* = 10 [MMIDs] *MPIDs* with display privileges), member B has three Supplemental [MMIDs] *MPIDs* with display privileges, and member C has three Supplemental [MMIDs] *MPIDs* with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental [MMIDs] *MPIDs* is the least used in WXYZ, C has the next lowest volume Supplemental [MMID] *MPID* with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental [MMIDs] *MPIDs* in WXYZ, C adds a Supplemental [MMID] *MPID* with display privileges in the security, and B

loses a display privilege in WXYZ – B does not lose use of the Supplemental [MMID] MPID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental [MMID] MPID.

\* \* \* \* \*

#### 5266. Market Participant Identifiers

(a) ITS/CAES market makers obligated to maintain a continuous two-sided quotation pursuant Rule 5220(e) shall have that quote displayed and attributed to them by a special market participant identifier (“MPID”). The first MPID issued to an ITS/CAES market maker shall be referred to as the ITS/CAES market maker’s “Primary MPID.”

(b) For pilot period commencing June 24, 2004 and terminating September 31, 2004, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as “Supplemental MPIDs.” ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(c) ITS/CAES market makers that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (b) of this rule are subject to the same rules applicable to the ITS/CAES market maker’s first quotation, with two exceptions: (1) the continuous two-sided quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to ITS/CAES market makers’ Supplemental MPIDs; and (2) Supplemental MPIDs may not be used by ITS/CAES market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

\* \* \* \* \*

#### IM-5266-1—Procedures For Allocation of Second Displayable MPIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security. Therefore, Nasdaq must consider the issuance and display of Supplemental MPIDs to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental MPIDs with attributable display privileges (“display privileges”) in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 5266, Nasdaq will automatically designate an ITS/CAES market maker’s first MPID as a “Primary MPID” and any additional MPIDs as “Supplemental MPIDs.” ITS/CAES market makers are required to use their Primary MPID in accordance with the requirements of a Primary MPID for listed securities. 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 SEC rules governing the trading of these securities—including the Intermarket System Plan and the Rule 5200 and 6300 Series. The multiple MPID for exchange-listed securities program creates no exceptions to these obligations. ITS/CAES market makers may also use Supplemental MPIDs 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 ITS/CAES market makers’ use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that one or more Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if an ITS/CAES market maker no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.

The first priority of Nasdaq’s method for allocating the privilege of displaying Supplemental MPID is that each ITS/CAES market maker should be permitted to register to display a single quotation in a security under a Primary MPID before any is permitted to register to display additional quotations under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental

MPIDs 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 ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for ITS/CAES market makers that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to ITS/CAES market makers requesting Primary MPIDs and then receives additional requests for Primary MPIDs, it will use the procedure described below to re-allocate display privileges to ITS/CAES market makers requesting Primary MPIDs.

For any stock in which Nasdaq has reached the maximum number of ITS/CAES market makers registered to display quotations, once each month, Nasdaq will rank each of the ITS/CAES market makers that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that ITS/CAES market maker’s least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental [MMID] MPID of the ITS/CAES market maker in that ranking and assign that privilege to the first ITS/CAES market maker that requested a Primary MPID or Supplemental MPID, with Primary MPIDs always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental MPIDs. If after following this process (or at the outset of the allocation process) no ITS/CAES market maker has more than one Supplemental MPID with display privileges, ITS/CAES market makers will be ranked based upon the volume associated with their Supplemental MPID, and Nasdaq will withdraw the display privilege from the ITS/CAES market maker with the lowest volume Supplemental MPID.

ITS/CAES market makers that lose the display privilege associated with a Supplemental MPID will still be permitted to use the Supplemental MPID to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

*The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MPIDs to those ITS/CAES market makers requesting Primary or Supplemental MPIDs. For example, assume with respect to security WXYZ ITS/CAES market maker A has nine Supplemental MPIDs with display privileges (which is the maximum – 1 Primary MPID + 9 Supplemental MPIDs = 10 MPIDs with display privileges), ITS/CAES market maker B has three Supplemental MPIDs with display privileges, and ITS/CAES market maker C has three Supplemental MPIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MPIDs is the least used in WXYZ, C has the next lowest volume Supplemental MPID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MPIDs in WXYZ, C adds a Supplemental MPID with display privileges in the security, and B loses a display privilege in WXYZ – B does not lose use of the Supplemental MPID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MPID.*

\* \* \* \* \*

## **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**

On March 1, 2004, Nasdaq submitted to the Commission SR–NASD–2004–037, establishing the ability of ECNs and market makers in Nasdaq securities to use up to ten individual Market Participant Identifiers (“MPIDs”) to

display attributable quotes and orders in the Nasdaq Quotation Montage.<sup>8</sup> In this filing, Nasdaq proposes to create this same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. MPIDs for exchange-listed securities will be allocated and re-allocated using the same procedures used for allocating MPIDs for Nasdaq securities when reaching technological limits for displayed, attributable MPIDs.<sup>9</sup> Similar to the multiple MPID program for Nasdaq securities, any additional MPID for listed trading will be known as a “Supplemental MPID” with a market maker's or ECN's first MPID being known as the “Primary MPID.”

Nasdaq believes that the purpose of providing additional MPIDs for firms trading exchange-listed securities in Nasdaq systems 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. According to Nasdaq, to the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, all market participants can be expected to benefit.<sup>10</sup>

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID for exchange-listed securities. 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—including the Intermarket Trading System (“ITS”) Plan and NASD Rule 5200 and 6300 Series. Nasdaq believes that the

<sup>8</sup> See Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004). In that filing, Nasdaq referred to these identifiers as “MMIDs.” In order to ensure consistency across all its rules, Nasdaq is amending the rules to refer to them by the acronym “MPID.”

<sup>9</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 them 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 re-allocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

<sup>10</sup> Nasdaq will assess no fees for the issuance or use of a Supplemental MPIDs for listed securities other than the Commission-approved transaction fees set forth in NASD Rule 7010.

multiple MPID for exchange-listed securities programs creates no exceptions to these obligations. In particular, ITS/CAES market makers may not use Supplemental MPIDs to trade-through the quotes of other ITS Plan participants, and Supplemental MPIDs are subject to the provisions of NASD Rule 5263 governing locked and crossed markets. Similarly, the rights attaching to quotations displayed by registered ITS/CAES market makers using a Supplemental MPID are the same as those of the primary quotations of such market makers—including protection from trade-throughs by other ITS Plan participants.

The granting of Supplemental MPIDs for exchange-listed securities is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID(s) to accomplish indirectly what they would be prohibited from doing directly through a single MPID. According to Nasdaq, 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 Nasdaq determines that a Supplemental exchange-listed MPID is being used improperly, it will withdraw its grant of the Supplemental exchange-listed 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>11</sup> in general and with Section 15A(b)(6) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 that the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse orders flows, thereby improving overall system liquidity for the benefit of all market participants.<sup>13</sup>

<sup>11</sup> 15 U.S.C. 78o-3.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> The NASD has represented to the Commission that the use of multiple MPIDs by member firms in connection with the trading of exchange-listed securities will not have a negative effect on NASD's ability to oversee the activity of its members trading exchange-listed securities. Telephone conversation among Stephen Luparello, Executive Vice

### 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.

### 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 proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) 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, it 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>

Nasdaq has requested that the Commission waive the 30-day operative period and allow Nasdaq to institute this proposal immediately. Nasdaq believes that such waiver of the 30-day period will enable the pilot to run for a reasonable time before expiring on September 31, 2004, the termination date for Nasdaq's MPID pilot for attributable quotes and orders in the Nasdaq Quotation Montage. The Commission has determined that good cause exists to waive the 30-day period. Allowing Nasdaq to institute the pilot immediately should permit Nasdaq sufficient time to evaluate the efficacy of the pilot prior to its scheduled termination on September 31, 2004.

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

President, Kathleen O'Mara, Associate General Counsel, NASD and Katherine England, Assistant Director, Ira Brandriss, Assistant Director, and Ian Patel, Attorney, Division, Commission on July 16, 2004.

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

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

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change. 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 Number SR-NASD-2004-097 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-097. 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 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-2004-097 and should be submitted on or before August 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-18188 Filed 8-9-04; 8:45 am]

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<sup>16</sup> 17 CFR 200.30-3(A)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50142; File No. SR-NYSE-2004-27]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Trading Pursuant to Unlisted Trading Privileges of iShares MSCI Index Funds and the S&P Europe 350 Index Fund

August 3, 2004.

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 June 15, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 23, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 3, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") proposes to trade pursuant to unlisted trading privileges the following iShares Index Funds,<sup>5</sup> which are Investment Company Units ("ICUs") under Section 703.16 of the Exchange Listed Company Manual: shares issued by iShares Trust:

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

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

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 21, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE, among other things, corrected the name of the iShares MSCI Emerging Markets Fund and also corrected the name of the underlying index for the iShares Pacific ex-Japan Fund.

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 3, 2004 ("Amendment No. 2"). In Amendment No. 2, the NYSE withdrew its request to trade pursuant to unlisted trading privileges the iShares MSCI Emerging Markets Fund and made representations regarding the compliance of the funds with the listing standards.

<sup>5</sup> iShares is a registered trademark of Barclays Global Investors, N.A.