



**T. Sean Bennett**  
Assistant General Counsel  
**P:** +1 301 978 8499  
**F:** +1 301 978 8472  
**E:** sean.bennett@nasdaqomx.com

August 25, 2010

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-9303

Re: SR-NASDAQ-2010-089

Dear Ms. Murphy:

This letter is submitted to respond to a comment received in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") review of the above-captioned proposed rule change. The proposed rule change implements a new fee for each market participant identifier or maker participant identifier approved by The NASDAQ Stock Market ("NASDAQ") for use by a member firm on NASDAQ systems of in excess of one (collectively, "Supplemental MPIDs").

At the outset, NASDAQ believes it is important to inform the Commission that the new rule, although not yet implemented, has had the desired effect of bringing efficiency to the use of MPIDs, as well as reducing administrative and regulatory burdens associated with the assignment and maintenance of MPIDs. NASDAQ has seen a 15% decrease in the number of MPIDs assigned by NASDAQ since the fee was announced. Although a significant number with regard to efficiency, the modest reduction in MPIDs shows that there is not a movement to aggregate walled-off business areas among member firms with multiple MPIDs, as asserted by the commenter to this filing and discussed below.

The Commission received a comment letter opposed to the new fee from an anonymous broker-dealer. This commenter asserts that small-to-mid-sized firms will incur substantial costs if the fee is adopted in light of comments made by FINRA, suggesting that broker-dealers with internally walled-off business areas should apply for unique MPIDs for these areas.<sup>1</sup> The Commenter believes that the proposed fee will also endanger the separation of business lines as firms will attempt to "cut costs/save money" by aggregating different business line order flow through a single MPID.

---

<sup>1</sup> See <http://www.finra.org/Newsroom/Speeches/Ketchum/P121427>.

Ms. Elizabeth M. Murphy

August 25, 2010

Page 2

A requirement to have individual MPIDs for walled-off business areas is by no means a *fait accompli*. The comments made by FINRA were made in May 2010 and much work and debate remains before such a requirement could be implemented. To be clear, NASDAQ supports efforts to improve audit trails, of which MPIDs may play a role. It is noteworthy, however, that NASDAQ has not seen an increase in requests for MPIDs from small-to-mid-sized member firms in light of the comments made by FINRA. It is also noteworthy that NASDAQ has not been contacted by small-to-mid-sized member firms with many walled-off business areas expressing the same concern in relation to the MPID fee that the anonymous commenter makes. NASDAQ's data show that the average number of MPIDs held by all NASDAQ member firms is less than 2.5, and the median is approximately 1. Nearly 400 member firms have one MPID assigned by NASDAQ, and 121 member firms have just two assigned MPIDs. The vast majority of these member firms could be considered small-to-medium-sized broker-dealers, yet only one comment letter was submitted. This would lead a reasonable person to conclude that the issue raised by the commenter is, at best, extremely limited.

Assuming that there is a small member firm that possesses many walled-off business lines and at some point MPIDs are required for each walled-off area, the member firm may elect to register its walled-off business lines as separate broker-dealers, as many firms elect to do, and as such would receive a primary MPID for each registered broker-dealer from NASDAQ at no cost. Alternatively, the member firm may decide to send its order flow elsewhere. As noted in the rule proposal, the market for transaction execution and routing services is highly competitive, given the numerous alternatives to transacting on NASDAQ. Although not an outcome NASDAQ would desire, it is possible for this hypothetical small firm with many walled-off business areas to send such order flow to a venue that does not assess an MPID fee.

We thank the Commission for the opportunity to respond to the comments made regarding SR-NASDAQ-2010-089 and welcome the opportunity answer any further questions concerning our proposal staff may have.

Respectfully,

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by a long horizontal line extending to the right.