

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Amendments to NASD Rules to align them with Regulation NMS and to allow for quoting, trade reporting and clearing through the Alternative Display Facility for all NMS stock.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date
 By Executive Vice President and General Counsel
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD rules, including the rules governing the Alternative Display Facility (“ADF”), to align them with Regulation NMS.² In addition, NASD is amending rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47), including New York Stock Exchange, LLC. (“NYSE”), American Stock Exchange LLC. (“AMEX”) and certain other regional listed-securities. Further, this rule proposal reorganizes ADF trade reporting rules and makes changes to the ADF rules to enhance the clarity of the rules.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.³

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

³ The SEC recently approved SR-NASD-2005-087, which establishes the Trade Reporting Facility (“TRF”). See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006). In today’s rule proposal, NASD is amending NASD rules to implement Regulation NMS and amending certain ADF rules to reflect that all NMS stock can be quoted and trade reported through the ADF. Any amendments that are needed to implement Regulation NMS for the TRF will be addressed in a separate filing.

2. Procedures of the Self-Regulatory Organization

The proposed rule change to expand ADF to permit the quoting, trade reporting and clearing of NYSE, AMEX and other regional securities was approved on June 9, 2005 by the Executive Committee of the Board of Governors of NASD, which authorized the filing of the rule change with the Commission. The proposed rule change to implement the Regulation NMS Order Protection Rules and Order Access Rules was approved by the NASD Markets, Services and Information Committee at its meeting on February 1, 2006, which authorized the filing of the rule change with the SEC. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on February 1, 2006. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

The effective date of the proposed rule change will be on or before February 5, 2007. NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The ADF is a quotation collection, trade comparison and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval

Order⁴ and in conjunction with Nasdaq's registration as a national securities exchange. The ADF, which currently is operating on a pilot basis, provides ADF market participants (market makers and Electronic Communication Networks ("ECNs"))⁵ the ability to post quotations in Nasdaq securities and provides all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the exclusive securities information processor ("SIP") for Nasdaq-listed issues for consolidation and dissemination of data to vendors and ADF market participants. The facility provides for trade comparison through the Trade Reporting and Comparison Service ("TRACS") and further provides for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules.

On June 29, 2005, the SEC published its release adopting Regulation NMS.⁶ Regulation NMS established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Among other things, Regulation NMS adopted an Order Protection Rule (SEC Rule 611) that requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. To be protected, a quotation must be immediately and automatically accessible. Regulation NMS also adopted an Access Rule (SEC Rule 610), which requires fair and non-discriminatory access to

⁴ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53).

⁵ ECNs are defined under Regulation NMS in SEC Rule 600(b)(23).

⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (referred to hereafter as the "Regulation NMS Approval Order").

quotations, establishes a limit on access fees to harmonize the pricing of quotations across different trading centers, and requires NASD and the exchanges to adopt, maintain and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying any quotations that lock or cross protected quotations and manual quotations that lock or cross quotations disseminated pursuant to an effective National Market System Plan (“NMS Plan”).⁷

The primary purpose of this filing is two-fold: (1) to amend NASD rules (primarily ADF Rules) to align them with Regulation NMS; and (2) to amend rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47). Previously, the ADF could only accommodate the quoting, trade reporting and clearing of Nasdaq securities, but this proposal also would allow for the quoting, trade reporting and clearing of NYSE, AMEX and certain other regional listed-securities. Further, this rule proposal amends and reorganizes ADF trade reporting rules to enhance the clarity of these rules. Below is a brief summary of the substantive changes NASD is proposing in this rule proposal.

⁷ In addition, Regulation NMS adopted a sub-penny rule that, in general, prohibits market participants from accepting, ranking or displaying orders, quotations or indications of interest in a pricing increment smaller than a penny, except for orders, quotations or indications of interest that are priced at less than \$1.00 per share. Further, Regulation NMS adopted amendments to the market data rules to update the requirements for consolidating, distributing and displaying market information, as well as amendments to the joint industry plans for disseminating market information that modify the formulas for allocating plan revenue and broadening participation in plan governance. This rule proposal primarily addresses implementation of the Order Protection Rule and the Access Rule. It does not address Regulation NMS issues related to the sub-penny rule or market data rules.

I. Align NASD Rules with Regulation NMS

Today, NASD is proposing to amend its rules to align them with Regulation NMS, specifically, the Order Protection Rule and the Access Rule. NASD also is proposing conforming changes to certain NASD rules to reflect the new numbering of SEC Rules in Regulation NMS. Lastly, NASD is filing, its proposed ADF Certification Record as part of this rule proposal to, among other things, allow for public notice and comment on the certifications to which new incoming ADF Trading Centers will be required to certify prior to being permitted to post quotations through the ADF.

A. Implementing the Order Protection Rule

The Order Protection Rule reinforces the fundamental principle of obtaining the best price for investors when such price is represented by automated quotations that are immediately accessible.⁸ In general, the Order Protection Rule requires trading centers to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an enumerated exception (as well as ensure compliance with such exceptions) and to surveil regularly to ascertain the effectiveness of the policies and

⁸ It should be noted that ADF's protected quotation will be transparent in the National Market System. As discussed in the Division of Market Regulation: Response to Frequently Asked Questions Concerning Rule 611 and Rule 612 of Regulation NMS, available at <http://www.sec.gov>, Question and Answer No. 7, the best bid of the ADF will reflect the quotation of a single ADF Trading Center. Accordingly, when two or more ADF participants are quoting at the best price for an NMS stock, the ADF must identify a single participant quotation for its best bid and size and a single participant for its best offer and size. Currently, this single participant will be identified by NASD based upon price, size, and time priority. Further, the identity of such ADF participant will be included in the Network quotation streams that are disseminated to the public.

procedures adopted pursuant to SEC Rule 611 and take prompt action to remedy deficiencies in such policies and procedures. To be a protected quotation, such quotation must be an “automated quotation,” as defined in SEC Rule 600(b)(3).

Consistent with many of the goals articulated by the Commission in adopting SEC Rule 611, NASD is proposing to amend Rule 4300A(e) to specify that an ADF Trading Center must submit Automated Quotations, as defined in SEC Rule 600(b)(3) (manual quotations, as defined in SEC Rule 600(b)(37), shall not be submitted to the ADF). In furtherance of that provision, Rule 4300A(e) will require that ADF Trading Centers adopt policies and procedures to ensure only automated quotations are submitted to the ADF. Moreover, ADF Trading Centers will be required to monitor their systems on a real-time basis to assess whether they are functioning properly.

NASD also is proposing to amend its system outage procedures found in Rule 4300A. A system outage will now be defined in Rule 4300A(e)(ii) as the posting of quotations in the ADF that are not automated quotations, and in that regard, failing to immediately and on an automated basis respond to orders. In light of the time frames that are pertinent in a Regulation NMS environment,⁹ NASD also is amending Rule 4300A to address ADF Trading Center system outages. ADF Operations shall determine: (1) when three unexcused outages during a five-day period should result in the suspension of an ADF Trading Center from quoting in the ADF for a period of twenty days; and (2) in

⁹ NASD also is deleting IM-4613 that banned the automated update of certain quotations through the ADF. NASD had originally adopted this IM to address capacity and operational concerns, but it no longer believes such a prohibition is necessary.

its discretion, whether an outage should be excused without limitation.¹⁰ It should be noted, however, that ADF Operations will strictly interpret the requirement under Rule 4300A that ADF Trading Centers only submit automated quotations. Accordingly, if an ADF Trading Center is experiencing technical problems and is unable to submit automated quotations, it must withdraw its quotations from the ADF and notify ADF operations.¹¹ As noted above, ADF Trading Centers will be strictly prohibited from displaying manual quotations in the ADF.

NASD also is amending ADF transaction reporting requirements to expressly require reporting members to append certain new identifiers to enhance regulation of the Order Protection Rule and to facilitate transparency to the marketplace. There are nine exceptions to the Order Protection Rule.¹² NASD is revising its transaction reporting requirements found in Rule 4632A to more closely align NASD modifiers with SEC Rule 611 exceptions.¹³ Specifically, NASD is adopting a new modifier (.X) that would be appended to a last sale report if the trade would be a trade-through of a protected

¹⁰ Currently, Rule 4300A(e)(4) will only permit five excused system outages to be granted in a thirty day period.

¹¹ See, proposed Rule 4619A that requires an ADF Trading Center to immediately withdraw its quotations and promptly contact ADF Operations if it cannot submit automated quotations. See also, proposed Rule 4621A that allows NASD to suspend, condition, limit, prohibit or terminate an ADF Trading Center's authority to enter quotations in one or more ADF-eligible securities for violation of applicable requirements or prohibitions.

¹² See, 17 CFR 242.611.

¹³ It should be noted, however, that firms are responsible for ensuring that the specific transaction falls expressly into the exception as set forth in SEC Rule 611. Accordingly, a firm cannot rely on the identification of a transaction pursuant to NASD rules as a type of trade that is excepted from Regulation NMS

quotation, but for the trade being qualified for an exception from SEC Rule 611. Further, reporting members also are required, in addition to using this new identifier (.X), to append a separate unique modifier, specified by NASD, which identifies the specific applicable exception from SEC Rule 611 upon which the member is relying. Moreover, NASD is amending Rule 4632A to ensure that certain individual modifiers that currently can be used to report multiple trading situations are more narrowly configured. In addition, NASD is proposing the creation of several new trade modifiers to supplement the proposed modifiers which are now more narrowly configured. For example, NASD members can currently use the .PRP modifier to report, market on open, market on close and missed executions. In this rule proposal, NASD is limiting the use of the .PRP modifier to reflect a price different from the current market when the execution price is based on a prior point in time. Accordingly, .PRP would be used primarily to reflect missed execution scenarios. A new modifier (.4) would be used when a transaction is based upon a single-priced opening, re-opening, or closing transaction by a trading center.¹⁴ Further, NASD also is proposing amendments to ADF order reporting requirements in Rule 4300A(b)(1)(N) and transaction reporting requirements in Rule 4632A(a)(4)(M) to expressly require the reporting of “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” NASD will provide a

without ensuring the specific trade meets all of the criteria set forth in SEC Rule 611.

¹⁴ NASD also is amending Rule 4632A to create a new stop stock modifier (.1). Previously, member firms used the .W modifier to identify stop stock, exchange for physicals, and volume weighted average price trades.

comprehensive list of all required modifiers when it publishes ADF technical specifications on or before October 16, 2007.

Consistent with NASD's responsibilities under the Order Protection Rule, NASD will review the activities of ADF Trading Centers and other NASD member trading centers.¹⁵ To complement NASD's automated surveillance for member compliance with the Order Protection Rule, NASD's Trading and Market Making Surveillance ("TMMS") examination program will examine relevant NASD members for adequate supervisory procedures applicable to Regulation NMS and to determine whether trading centers are in fact conducting internal surveillance for trade-throughs. NASD also will examine for continued compliance with the real-time monitoring requirements and for potentially excessive use of certain trade-through exceptions. Annual compliance questionnaires will be used for this same regulatory purpose for firms not subject to a TMMS examination.

B. Implementing the Access Rule

The Access Rule promotes fair and non-discriminatory access to quotations displayed by trading centers through a private linkage approach. In general, the Access Rule: (1) requires that Self Regulatory Organizations ("SROs") not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member to the quotations in an NMS stock displayed through its SRO trading facility; (2) requires that trading centers that display quotations in an NMS stock through

¹⁵ It should be noted that the regulatory processes discussed in this rule proposal relate solely to NASD's responsibilities under Regulation NMS as an SRO. This rule proposed does not address NASD's regulatory responsibilities to other SROs that have contracted with NASD to provide regulatory services.

an SRO display-only facility (such as the ADF) provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock and ensure that they do not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber or customer of the trading center; (3) adopts limits on fees for accessing quotations; and (4) requires that SROs establish, maintain and enforce written rules that: (a) require their members to reasonably avoid displaying quotations that lock or cross any protected quotation in an NMS stock, (b) require their members to avoid displaying manual quotations that lock or cross a quotation in an NMS stock that was previously disseminated pursuant to an NMS Plan, (c) assure the reconciliation of locked or crossed quotations in an NMS stock, and (d) prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotations in an NMS stock, or displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an NMS Plan, other than quotations permitted by an exception contained in its rules.

In approving Regulation NMS, the Commission articulated the expectation that NASD, as the SRO responsible for the OTC market, will act as “gatekeeper” of the ADF.¹⁶ In that regard, NASD will be required to make an “affirmative determination” as to whether ADF Trading Centers are complying with the SEC Rule 610 access standard.¹⁷ NASD will fulfill this obligation in several ways. First, NASD is expressly incorporating the Regulation NMS access standard into proposed Rule 4300A. An ADF

¹⁶ See, Regulation NMS Approval Order at 37543.

¹⁷ See, Regulation NMS Approval Order at 37543.

Trading Center is expressly required to: (1) provide a level and cost of access to such quotation that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities generally; (2) demonstrate that it has sufficient technology to automatically update its quotations and immediately respond to orders for execution directly against the individual ADF Trading Center's best bid or offer (i.e., sufficient technology to display automated quotations); and (3) ensure that it does not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations. Further, NASD is amending Rule 4300A to require that ADF Trading Centers provide direct electronic access to any registered broker-dealer that requests it.

At the request of SEC staff, NASD also is amending Rule 4300A(d)(1), to require ADF Trading Centers to use a communication service(s) that is deemed sufficient by NASD. To facilitate this effort, NASD staff will develop and post on the NASD website a list of NASD approved private sector connectivity providers (e.g., financial extranet services and direct market access firms). To remain current with industry practice, the list will be reviewed periodically and updated on an as needed basis. NASD staff will not necessarily review the technical functionality of the various connectivity providers, but will assess the reliability, cost effectiveness and the extent to which the service is sufficiently prevalent among firms that require the ability to route orders to an ADF Trading Center to meet their Order Protection Rule obligations. In addition, while NASD staff will evaluate the level and cost of accessing ADF Trading Centers on a case-by-case basis, ADF Trading Centers are required to be accessible through at least two

approved connectivity providers.¹⁸ Also, in conformity with the guidance provided by the Commission in the Regulation NMS Approval Order, NASD will expect ADF Trading Centers to defray connectivity costs to the extent that the level and cost of access offered by ADF Trading Centers is not substantially equivalent to the level and cost of access offered generally by SRO trading facilities.¹⁹

Second, NASD is proposing change as to its Certification Record process to address the standards set forth in SEC Rule 610, including requiring documentation that demonstrates that ADF Trading Center costs are substantially equivalent with costs of accessing SRO trading facilities generally.²⁰ The Certification Record process will specifically require ADF Trading Centers to make representations that they are able to

¹⁸ It is important to note that the approved private sector connectivity provider list will not serve as an exclusive list of connectivity options for accessing an ADF Trading Center. For instance, to the extent a market participant deems it necessary, it could choose to connect to an ADF Trading Center via a dedicated telecommunications line. However, an ADF Trading Center would not be obligated to provide such dedicated access if it is accessible through at least two providers on the approved list.

¹⁹ See, Regulation NMS Approval Order at 37541. The Commission stated that “[u]nder Rule 610(b)(1) . . . ADF participants will be required to bear the costs of the necessary connectivity to facilitate efficient access to their quotations.”

²⁰ In this regard, NASD is required to evaluate “substantially equivalent” cost of access on a per transaction basis. As the Commission noted in the Regulation NMS Approval Order, this cannot be evaluated in terms of absolute dollars. For example, in evaluating access a \$1,000 port charge for an ECN participating in ADF that trades one million shares per day would not be substantially equivalent to a \$1,000 port fee charged by an SRO trading facility trading 100 million shares per day. See, Regulation NMS Approval Order at 37543. In evaluating “substantially equivalent” cost of access, NASD will look at cost related to directly accessing SRO trading facilities generally. Specifically, NASD will look at ADF Trading Center and SRO connectivity costs such as line costs and port charges. In addition, NASD will also consider costs associated with SRO membership in evaluating “substantially equivalent” costs.

comply with the various requirements of SEC Rule 610. To that end, one of the goals of NASD's amended Certification Record process is to make certain that ADF Trading Centers possess technology capable of offering automated quotations (i.e., that ADF Trading Centers are capable of immediate internal order turnaround times not to equal or exceed one second). As noted above, the Commission has tasked NASD with making an affirmative determination as to the extent to which ADF Trading Centers offer substantially equivalent level and cost of access relative to SRO trading facilities. This will require NASD staff to consider the ADF Trading Center's system functionality robustness, the ability of market participants to interface efficiently with the ADF Trading Center's system, and the fee structure of the ADF Trading Center. The Certification Record process will be used to inform NASD in these areas and is discussed in greater detail later in this document.

Third, NASD is amending Rule 4400A to provide standing for all registered broker-dealers, not just members, to file a direct or indirect access complaint with NASD. This will ensure that there is a process in place for promptly addressing claims that an ADF Trading Center is preventing or inhibiting efficient access to its quotations.²¹ Further, NASD will allow such complaints to be filed via facsimile, e-mail, personal delivery, courier or overnight mail. It is NASD's belief in amending Rule 4400A that NASD will be notified when issues concerning a limitation or denial of access arise. Moreover, the process specified in Rule 4400A will allow NASD to promptly address

²¹ Proposed Rule 4400A allows any registered broker-dealer to file a direct or indirect access complaint against an ADF Trading Center with NASD to allege a denial of or limitation on access. It should be noted, however, that the filing of a frivolous direct or indirect access complaint by an NASD member could constitute a violation of Rule 2110.

such issues and, if it is determined that there has been or there is an ongoing limitation or denial of access, NASD will limit, as appropriate and necessary, an ADF Trading Center's participation in ADF, including the withdrawal of its quotations from ADF, until access is provided.²²

Fourth, through the examination process and annual compliance questionnaires, NASD will review the activities of ADF Trading Centers. With respect to the Access Rule, NASD's automated surveillance for certain aspects of the Access Rule will again be complemented through the review of relevant NASD members' supervisory procedures through the TMMS examination program. NASD also plans to use annual compliance questionnaires to determine on-going compliance with requirements such as "substantially equivalent" access, access fees and conditions on access.

Lastly, NASD is proposing to adopt a new Rule 4130A that requires members to reasonable avoid locking or crossing a quotation in NMS stock during regular trading hours, unless it meets a specified exception, and to avoid displaying manual quotations that lock or cross any quotation in an NMS stock previously disseminated pursuant to an effective NMS Plan. This new Rule 4130A is being adopted in conformity with the SRO requirements set forth in the Access Rule.

The SEC staff asked each of the SROs to ensure that its locking or crossing quotation rules are generally consistent among the SROs. NASD is replacing this Rule in the 4000 series because the ADF is the only facility NASD currently provides that allows

²² The Commission noted in the Regulation NMS Approval Order that, if an ADF participant is not complying with these access standards, NASD would have a responsibility to stop publishing the participant's quotations until the participant comes into compliance. See, Regulation NMS Approval Order at 37543. Rule 4400A is being amended to expressly incorporate this authority.

its members to display quotations in NMS stock. Further, Rule 4613A is being amended to delete provisions that currently prohibit locked or crossed intra-market quotations during regular trading hours. This is being proposed because new Rule 4130A will be applied during regular trading hours, rather than Rule 4613A. The provisions in Rule 4613A, however, that address locked or crossed quotation conditions in the ADF prior to opening the market will remain. Rule 4613A also is being modified to clarify the application of this rule in a Regulation NMS environment.

C. Making Conforming Changes to Reflect New Numbering of SEC Rules in Regulation NMS

NASD also is making conforming changes to certain NASD rules to reflect the new numbering of SEC rules in Regulation NMS. To simplify the structure of the rules adopted under Section 11A of the Exchange Act (“NMS rules”), the SEC renumbered previously adopted NMS rules, incorporated such rules into Regulation NMS and established a new definitional rule, Rule 600. Accordingly, NASD is proposing to update all references to the NMS rules to reflect the new SEC rule numbers.²³

D. Overview of NASD Certification Record Process

Also, critical to NASD’s Regulation NMS compliance effort is the establishment of an enhanced Certification Record process for ADF Trading Centers. In light of the importance of the Certification Record process to NASD’s Regulation NMS program,

²³ NASD also is proposing to delete the requirement currently found in Rule 4613A(e) that requires a member that uses an ADF terminal or other electronic interface to have available in close proximity to the ADF terminal or interface a service that disseminates the bid price and offer price from all markets trading that security. NASD is proposing this change to reflect changes that the SEC made to the Vendor Display Rule when adopting SEC Rule 603.

NASD is filing with the SEC a copy of its proposed Certification Record with this rule filing.²⁴ Each enumerated item on the ADF Trading Center Certification Record must be certified to by a duly authorized representative²⁵ of the ADF Trading Center at the time of initial application to become an ADF participant. Moreover, recertification of the ADF Trading Center Certification Record must be required within 30 days of the end of each ADF Trading Center fiscal year.²⁶

The ADF Trading Center Certification Record will include, at a minimum, the specific certifications listed below (in substantially the form described below) and will require that supporting documentation be filed with NASD to demonstrate that the certifications are reasonably supported.²⁷ However, as noted in proposed Rule 4300A(c), acceptance of an ADF Trading Center's Certification Record does not relieve an ADF Trading Center of any of its on-going obligations and shall not constitute an estoppel as

²⁴ NASD is amending Rule 4200A to define the term "Certification Record." In addition, Rule 4300A also is being amended to expressly require compliance with the "terms agreed to in the Certification Record."

²⁵ This representative typically should be the Chief Compliance Officer or other principal with appropriate oversight responsibilities.

²⁶ It should be noted that current ADF Trading Centers also would be required to be re-certified prior to the implementation of Regulation NMS. Accordingly, there will be no "grandfather" allowance for current ADF Trading Centers.

²⁷ For example, as part of the certification process NASD staff will require ADF Trading Centers to certify and demonstrate that they offer fair and non-discriminatory access to any person as required by Regulatory NMS. NASD staff generally anticipates that ADF Trading Centers will demonstrate offering the requisite fair and non-discriminatory access by providing NASD staff with relevant documentation, including: (i) subscriber criteria (including types of subscriber classes, if applicable); (ii) subscriber agreement (or relevant contractual agreement language related to subscriber rights and restrictions of use); (iii) fee schedules (including relevant rebates, discounts, capacity charges, etc.); (iv) compatible data interface protocols; and (v) connectivity options.

to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding.

i. Order Protection Rule Certification

Consistent with the Order Protection Rule, an ADF Trading Centers will be required to certify that it monitors in real time protected quotations, including the protected quotations of other ADF Trading Centers and SRO trading facilities,²⁸ and that it has implemented a industry clock synchronization protocol such that the ADF Trading Center's internal clock used for Regulation NMS compliance purposes is set to Eastern Standard Time and is corrected to the NIST Atomic Clock, and in no event is the ADF Trading Center's internal clock more than one second away from the NIST Atomic Clock. As noted above, and required by Rule 4300A(e), ADF Trading Centers also will be required to certify that they will submit only "automated quotations"²⁹ for display on the ADF and that under no circumstances will a manual quotation be submitted (including a quotation that otherwise would be an automated quotation, but for a trading center system error, malfunction, latency, etc.). Moreover, ADF Trading Centers will be required to certify that they offer immediate-or-cancel order execution functionality for execution against their protected quotations and that such functionality is offered to those required to be granted access to protected quotations. ADF Trading Centers also will be required to certify that their order response time will at least meet the response time required for its quotations to qualify as automated quotations under Regulation NMS. In addition, ADF Trading Centers will be required to further certify that in no event will

²⁸ See, 17 CFR 242.600(b)(72).

²⁹ See, 17 CFR 242.600(b)(3).

their order response time be equal to or greater than 1.00 elapsed second and in no event will their immediate response to orders require any human discretion for completion.

ii. Access Rule Certifications

NASD is proposing significant revisions to its ADF Trading Center Certification Record process to ensure compliance with the Access Rule. In addition to access and order reporting requirements expressly set forth in proposed Rule 4300A, many of the certifications seek to further ensure that each ADF Trading Center will “provide a level and cost of access” to quotations displayed through the ADF “that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities.”³⁰ ADF Trading Centers will be required to certify that they offer fair and non-discriminatory access. Moreover, ADF Trading Centers must provide documentation demonstrating that they are complying with these requirements. Further, ADF Trading Centers will be required to certify their acknowledgment that, to the extent that NASD deems an ADF Trading Center not to be granting the requisite level and cost of access, that ADF Trading Center will be required by NASD to defray the connectivity costs of those persons entitled to access the ADF Trading Center. In addition, ADF Trading Centers will be required to certify that, if they charge a fee in excess of the fee cap for accessing orders other than protected quotations, they will provide functionality that prevents market participants from inadvertently accessing a non-protected quotation and being charged a fee in excess of the fee cap.

An ADF Trading Center also will acknowledge through the Certification Record process that NASD will not permit an ADF Trading Center’s quotations to be displayed

³⁰ 17 CFR 242.610.

through the ADF, unless NASD determines that sufficient public notice has been provided of the ADF Trading Center's intention to display quotations through the ADF at least 60 days in advance of such activity and, at least initially, in conformity with the standard set forth by the SEC in its order extending certain Regulation NMS compliance dates.³¹ With regard to an ADF Trading Center that displays quotations in the ADF prior to the implementation of Regulation NMS and seeks to continue uninterrupted quoting on the ADF after Regulation NMS implementation, such ADF Trading Center also must comply with this 60-day public notice period in advance of Regulation NMS implementation.

NASD will require that such advance notice be given through reasonable means (e.g., through press releases, the NASD web site, and the ADF Trading Center's web site). Further, ADF Trading Centers also will be required to certify as part of the pre-quotation notice period that they have made publicly available through reasonable means relevant connectivity and access technical specifications, including: (i) technical interface specifications (e.g., compatible system protocols, etc.); (ii) testing schedules; (iii) connectivity providers (e.g., extranet providers and direct market access firms) through which the ADF Trading Center's quotations may be accessed; and (iv) all relevant subscriber and non-subscriber fees, access fees, port fees, connectivity fees and rebates.

³¹ See, Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) that requires ADF participants to meet the new automation requirements discussed above to qualify.

II. Extend ADF Quoting, Trade Reporting and Clearing Functionality to All NMS Stock

NASD is amending rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47). Currently, the ADF only accommodates the quoting, trade reporting and clearing of Nasdaq securities, but this proposal would allow for the quoting, trade reporting and clearing of NYSE, AMEX and certain other regional listed-securities. Specifically, NASD is changing the definition of “ADF-eligible security” to include all NMS stock, as defined in SEC Rule 600(b)(47). In addition, NASD is amending ADF rules to adopt uniform rules governing quoting and trade reporting of Nasdaq, NYSE, AMEX and certain other regional listed-securities.

Since NASD is incorporating the requirements to quote and trade report for all NMS stock directly into the ADF rules, NASD will no longer need a separate set of rules (currently found in the Rule 6300 and 6400 Series) governing the quoting and trade reporting of NYSE, AMEX and certain other regional securities.³² Therefore, NASD is deleting the rules currently found in the Rule 6300 and 6400 series.³³ Further, in

³² It should be noted that while ADF rules will be applied in a uniform manner to all NMS stock to the extent possible, NMS stock is subject to two separate transaction reporting plans. Nasdaq securities are governed by the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (UTP Plan) and NYSE, AMEX and certain other regional securities are governed by the Consolidated Quotation Plan (CQ Plan) and the Consolidated Tape Association Plan (CTA Plan).

³³ It should be noted that while the NASD is deleting the Rule 6300 and 6400 series, many of the same requirements set forth in the Rule 6300 and 6400 series are being incorporated expressly into the amended ADF rules.

conformity with the new standards articulated in Regulation NMS, NASD does not intend to be a participant of the Intermarket Trading System Plan (“ITS Plan”) or the new National Market System Linkage Plan (“NMS Linkage Plan”). Instead, ADF quotes in all NMS stock will be accessible through private connectivity providers in accordance with the proposed quote and order access requirements set forth in Rule 4300A. As discussed previously, this requires, among other things, that ADF Trading Centers provide direct electronic access to other ADF market participants and direct or indirect electronic access to all other registered broker-dealers seeking such access. Accordingly, because NASD does not intend to participate in the ITS Plan or the new NMS Linkage Plan, the Rule 5200 Series (containing ITS Rules) is being deleted in its entirety. Lastly, corresponding changes are being made to the Rule 6100A Series that governs the use of the TRACS Trade Comparison Service to reflect the inclusion of all NMS stock in the ADF.

III. Reorganize ADF Trade Reporting Rules to Enhance the Clarity of the Rules

NASD is amending the ADF trade reporting rules to enhance their clarity. Specifically, NASD is proposing to amend Rule 4630A to clarify that transactions executed otherwise than on an exchange must be reported to ADF TRACS, in accordance with Rule 4632A or another pertinent NASD rules, unless they are reported to another facility designated by the SEC as being authorized to accept trade reports for trades executed otherwise than on an exchange.³⁴ In addition, NASD is amending Rule 4632A

³⁴ See e.g., Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR-NASD-2005-087) (establishing, among other things, rules for the trade reporting of transactions otherwise than on an exchange through the new Trade Reporting Facility).

to reorganize the ADF trade reporting rules. NASD is also amending Rule 4632A to require members to report execution time in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included on the report.³⁵

In general, NASD is inserting in Rule 4632A(a) the same requirements that were previously found in Rule 5430(a).³⁶ NASD is, however, rearranging the order of certain requirements and changing the headings (or adopting additional headings) to provide clarity. In addition, NASD is proposing to use consistent terms, whenever appropriate, throughout this rule. For example, NASD is referring to “member” obligations whenever possible, rather than listing all the different types of members that are subject to the particular rule.

NASD also is proposing to amend Rule 4632A(b) to set forth which party is responsible for reporting transactions to NASD. These proposed rules are being simplified to delineate reporting responsibility between registered reporting members, non-registered reporting members, and customers or non-members. In general, Rule 4632A(b) requires the following: (1) transactions executed on an exchange are not to be reported to TRACS by members; (2) in transactions between two registered reporting members, the sell side shall report the trade; (3) in transactions between a registered

³⁵ As described previously in the Order Protection Rule discussion, NASD also is changing the required modifiers set forth in Rule 4632A(a) to more closely align them with Regulation NMS and is inserting a general provision that requires members to report “any other modifier as specified by NASD or the Securities and Exchange Commission.”

³⁶ It should be noted that certain definitions previously found in Rule 5420, such as stop stock transactions, are being expressly incorporated into Rule 4200A.

reporting member and non-registered reporting member, the registered reporting member is required to report the trade; (4) in transactions between two non-registered reporting members, the sell side shall report the trade; (5) in transactions between a member and a customer or non-member, the member shall report the trade.³⁷

NASD also is amending Rule 4632A(f). Currently, Rule 4632A(f) allows for the aggregation of transaction reports under certain circumstances. NASD is proposing to amend Rule 4632A(f) to expressly prohibit aggregation of individual execution of orders in a security at the same price into a single transaction report. NASD has determined that it no longer will allow members to bunch transactions for reporting purposes. By prohibiting bunching, the NASD is ensuring greater transparency of individual transactions. NASD also is amending Rule 4632A(l) to clarify a member's obligations under ADF rules to report cancelled trades in a timely manner. Lastly, NASD is amending the Rule 6100A series concerning the TRACS Trade Comparison Service to use terminology consistent with the ADF rules found in the Rule 4000A series.³⁸

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date of the proposed rule change will be on or before February 5, 2007.

(b) Statutory Basis

³⁷ Rule 4200A definitions were also amended to ensure the terms "registered reporting member" and "non-registered reporting member" used in the transaction reporting rules are defined terms.

³⁸ NASD also is amending Rule 4120A to add a provision that addresses extraordinary market activity. This clarifies that NASD, in its discretion, may initiate trading halts or close the ADF under certain circumstances.

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁹ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As noted above, NASD is filing this rule proposal in order to align NASD Rules with Regulation NMS and to allow for the quoting, trade reporting and clearing of all NMS stock through the ADF. NASD believes these goals are consistent with 15A(b)(6) and that this rule proposal facilitates the goals articulated in Regulation NMS, including providing an effective mechanism and regulatory framework for the over-the-counter market.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

5. 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.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁴⁰

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

³⁹ 15 U.S.C. 78o-3(b)(6).

⁴⁰ 15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 3. ADF Trading Center Certification Record

Exhibit 5. Text of proposed rule change marked to show additions to and deletions from the current rule language.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-091)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Align NASD Rules with SEC's Regulation NMS

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The 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

NASD is proposing to amend NASD rules, including the rules governing the Alternative Display Facility ("ADF"), to align them with Regulation NMS.³ In addition, NASD is amending rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47), including New York Stock Exchange, LLC. ("NYSE"), American Stock Exchange LLC. ("AMEX") and certain other regional listed-securities. Further, this rule proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

reorganizes ADF trade reporting rules and makes changes to the ADF rules to enhance the clarity of the rules.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

The ADF is a quotation collection, trade comparison and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order⁵ and in conjunction with Nasdaq's registration as a national securities exchange. The ADF, which currently is operating on a pilot basis, provides ADF market participants (market makers and Electronic Communication Networks ("ECNs"))⁶ the ability to post

⁴ The SEC recently approved SR-NASD-2005-087, which establishes the Trade Reporting Facility ("TRF"). See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006). In today's rule proposal, NASD is amending NASD rules to implement Regulation NMS and amending certain ADF rules to reflect that all NMS stock can be quoted and trade reported through the ADF. Any amendments that are needed to implement Regulation NMS for the TRF will be addressed in a separate filing.

⁵ Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53).

⁶ ECNs are defined under Regulation NMS in SEC Rule 600(b)(23).

quotations in Nasdaq securities and provides all members that participate in the ADF the ability to view quotations and report transactions in Nasdaq securities to the exclusive securities information processor (“SIP”) for Nasdaq-listed issues for consolidation and dissemination of data to vendors and ADF market participants. The facility provides for trade comparison through the Trade Reporting and Comparison Service (“TRACS”) and further provides for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules.

On June 29, 2005, the SEC published its release adopting Regulation NMS.⁷ Regulation NMS established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Among other things, Regulation NMS adopted an Order Protection Rule (SEC Rule 611) that requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. To be protected, a quotation must be immediately and automatically accessible. Regulation NMS also adopted an Access Rule (SEC Rule 610), which requires fair and non-discriminatory access to quotations, establishes a limit on access fees to harmonize the pricing of quotations across different trading centers, and requires NASD and the exchanges to adopt, maintain and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying any quotations that lock or cross protected quotations and manual

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (referred to hereafter as the “Regulation NMS Approval Order”).

quotations that lock or cross quotations disseminated pursuant to an effective National Market System Plan (“NMS Plan”).⁸

The primary purpose of this filing is two-fold: (1) to amend NASD rules (primarily ADF Rules) to align them with Regulation NMS; and (2) to amend rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47). Previously, the ADF could only accommodate the quoting, trade reporting and clearing of Nasdaq securities, but this proposal also would allow for the quoting, trade reporting and clearing of NYSE, AMEX and certain other regional listed-securities. Further, this rule proposal amends and reorganizes ADF trade reporting rules to enhance the clarity of these rules. Below is a brief summary of the substantive changes NASD is proposing in this rule proposal.

I. Align NASD Rules with Regulation NMS

Today, NASD is proposing to amend its rules to align them with Regulation NMS, specifically, the Order Protection Rule and the Access Rule. NASD also is proposing conforming changes to certain NASD rules to reflect the new numbering of SEC Rules in Regulation NMS. Lastly, NASD is filing, its proposed ADF Certification Record as part of this rule proposal to, among other things, allow for public notice and

⁸ In addition, Regulation NMS adopted a sub-penny rule that, in general, prohibits market participants from accepting, ranking or displaying orders, quotations or indications of interest in a pricing increment smaller than a penny, except for orders, quotations or indications of interest that are priced at less than \$1.00 per share. Further, Regulation NMS adopted amendments to the market data rules to update the requirements for consolidating, distributing and displaying market information, as well as amendments to the joint industry plans for disseminating market information that modify the formulas for allocating plan revenue and broadening participation in plan governance. This rule proposal primarily addresses implementation of the Order Protection Rule and the Access Rule. It does not address Regulation NMS issues related to the sub-penny rule or market data rules.

comment on the certifications to which new incoming ADF Trading Centers will be required to certify prior to being permitted to post quotations through the ADF.

A. Implementing the Order Protection Rule

The Order Protection Rule reinforces the fundamental principle of obtaining the best price for investors when such price is represented by automated quotations that are immediately accessible.⁹ In general, the Order Protection Rule requires trading centers to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an enumerated exception (as well as ensure compliance with such exceptions) and to surveil regularly to ascertain the effectiveness of the policies and procedures adopted pursuant to SEC Rule 611 and take prompt action to remedy deficiencies in such policies and procedures. To be a protected quotation, such quotation must be an “automated quotation,” as defined in SEC Rule 600(b)(3).

Consistent with many of the goals articulated by the Commission in adopting SEC Rule 611, NASD is proposing to amend Rule 4300A(e) to specify that an ADF Trading Center must submit Automated Quotations, as defined in SEC Rule 600(b)(3) (manual quotations, as defined in SEC Rule 600(b)(37), shall not be submitted to the ADF). In

⁹ It should be noted that ADF’s protected quotation will be transparent in the National Market System. As discussed in the Division of Market Regulation: Response to Frequently Asked Questions Concerning Rule 611 and Rule 612 of Regulation NMS, available at <http://www.sec.gov>, Question and Answer No. 7, the best bid of the ADF will reflect the quotation of a single ADF Trading Center. Accordingly, when two or more ADF participants are quoting at the best price for an NMS stock, the ADF must identify a single participant quotation for its best bid and size and a single participant for its best offer and size. Currently, this single participant will be identified by NASD based upon price, size, and time priority. Further, the identity of such ADF participant will be included in the Network quotation streams that are disseminated to the public.

furtherance of that provision, Rule 4300A(e) will require that ADF Trading Centers adopt policies and procedures to ensure only automated quotations are submitted to the ADF. Moreover, ADF Trading Centers will be required to monitor their systems on a real-time basis to assess whether they are functioning properly.

NASD also is proposing to amend its system outage procedures found in Rule 4300A. A system outage will now be defined in Rule 4300A(e)(ii) as the posting of quotations in the ADF that are not automated quotations, and in that regard, failing to immediately and on an automated basis respond to inbound orders. In light of the time frames that are pertinent in a Regulation NMS environment,¹⁰ NASD also is amending Rule 4300A to address ADF Trading Center system outages. ADF Operations shall determine: (1) when three unexcused outages during a five-day period should result in the suspension of an ADF Trading Center from quoting in the ADF for a period of twenty days; and (2) in its discretion, whether an outage should be excused without limitation.¹¹ It should be noted, however, that ADF Operations will strictly interpret the requirement under Rule 4300A that ADF Trading Centers only submit automated quotations. Accordingly, if an ADF Trading Center is experiencing technical problems and is unable to submit automated quotations, it must withdraw its quotations from the ADF and notify

¹⁰ NASD also is deleting IM-4613 that banned the automated update of certain quotations through the ADF. NASD had originally adopted this IM to address capacity and operational concerns, but it no longer believes such a prohibition is necessary.

¹¹ Currently, Rule 4300A(e)(4) will only permit five excused system outages to be granted in a thirty day period.

ADF operations.¹² As noted above, ADF Trading Centers will be strictly prohibited from displaying manual quotations in the ADF.

NASD also is amending ADF transaction reporting requirements to expressly require reporting members to append certain new identifiers to enhance regulation of the Order Protection Rule and to facilitate transparency to the marketplace. There are nine exceptions to the Order Protection Rule.¹³ NASD is revising its transaction reporting requirements found in Rule 4632A to more closely align NASD modifiers with SEC Rule 611 exceptions.¹⁴ Specifically, NASD is adopting a new modifier (.X) that would be appended to a last sale report if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception from SEC Rule 611. Further, reporting members also are required, in addition to using this new identifier (.X), to append a separate unique modifier, specified by NASD, which identifies the specific applicable exception from SEC Rule 611 upon which the member is relying. Moreover, NASD is amending Rule 4632A to ensure that certain individual modifiers that currently can be used to report multiple trading situations are more narrowly configured. In

¹² See, proposed Rule 4619A that requires an ADF Trading Center to immediately withdraw its quotations and promptly contact ADF Operations if it cannot submit automated quotations. See also, proposed Rule 4621A that allows NASD to suspend, condition, limit, prohibit or terminate an ADF Trading Center's authority to enter quotations in one or more ADF-eligible securities for violation of applicable requirements or prohibitions.

¹³ See, 17 CFR 242.611.

¹⁴ It should be noted, however, that firms are responsible for ensuring that the specific transaction falls expressly into the exception as set forth in SEC Rule 611. Accordingly, a firm cannot rely on the identification of a transaction pursuant to NASD rules as a type of trade that is excepted from Regulation NMS without ensuring the specific trade meets all of the criteria set forth in SEC Rule 611.

addition, NASD is proposing the creation of several new trade modifiers to supplement the proposed modifiers which are now more narrowly configured. For example, NASD members can currently use the .PRP modifier to report, market on open, market on close and missed executions. In this rule proposal, NASD is limiting the use of the .PRP modifier to reflect a price different from the current market when the execution price is based on a prior point in time. Accordingly, .PRP would be used primarily to reflect missed execution scenarios. A new modifier (.4) would be used when a transaction is based upon a single-priced opening, re-opening, or closing transaction by a trading center.¹⁵ Further, NASD also is proposing amendments to ADF order reporting requirements in Rule 4300A(b)(1)(N) and transaction reporting requirements in Rule 4632A(a)(4)(M) to expressly require the reporting of “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” NASD will provide a comprehensive list of all required modifiers when it publishes ADF technical specifications on or before October 16, 2007.

Consistent with NASD’s responsibilities under the Order Protection Rule, NASD will review the activities of ADF Trading Centers and other NASD member trading centers.¹⁶ To complement NASD’s automated surveillance for member compliance with the Order Protection Rule, NASD’s Trading and Market Making Surveillance (“TMMS”)

¹⁵ NASD also is amending Rule 4632A to create a new stop stock modifier (.1). Previously, member firms used the .W modifier to identify stop stock, exchange for physicals, and volume weighted average price trades.

¹⁶ It should be noted that the regulatory processes discussed in this rule proposal relate solely to NASD’s responsibilities under regulating NMS as an SRO. This rule proposed does not address NASD’s regulatory responsibilities to other SROs that have contracted with NASD to provide regulatory services.

examination program will examine relevant NASD members for adequate supervisory procedures applicable to Regulation NMS and to determine whether trading centers are in fact conducting internal surveillance for trade-throughs. NASD also will examine for continued compliance with the real-time monitoring requirements and for potentially excessive use of certain trade-through exceptions. Annual compliance questionnaires will be used for this same regulatory purpose for firms not subject to a TMMS examination.

B. Implementing the Access Rule

The Access Rule promotes fair and non-discriminatory access to quotations displayed by trading centers through a private linkage approach. In general, the Access Rule: (1) requires that Self Regulatory Organizations (“SROs”) not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member to the quotations in an NMS stock displayed through its SRO trading facility; (2) requires that trading centers that display quotations in an NMS stock through an SRO display-only facility (such as the ADF) provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock and ensure that they do not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber or customer of the trading center; (3) adopts limits on fees for accessing quotations; and (4) requires that SROs establish, maintain and enforce written rules that: (a) require their members to reasonably avoid displaying quotations that lock or cross any protected quotation in an NMS stock, (b) require their members to avoid displaying manual quotations that lock or cross a

quotation in an NMS stock that was previously disseminated pursuant to an NMS Plan, (c) assure the reconciliation of locked or crossed quotations in an NMS stock, and (d) prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotations in an NMS stock, or displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an NMS Plan, other than quotations permitted by an exception contained in its rules.

In approving Regulation NMS, the Commission articulated the expectation that NASD, as the SRO responsible for the OTC market, will act as “gatekeeper” of the ADF.¹⁷ In that regard, NASD will be required to make an “affirmative determination” as to whether ADF Trading Centers are complying with the SEC Rule 610 access standard.¹⁸ NASD will fulfill this obligation in several ways. First, NASD is expressly incorporating the Regulation NMS access standard into proposed Rule 4300A. An ADF Trading Center is expressly required to: (1) provide a level and cost of access to such quotation that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities generally; (2) demonstrate that it has sufficient technology to automatically update its quotations and immediately respond to orders for execution directly against the individual ADF Trading Center’s best bid or offer (i.e., sufficient technology to display automated quotations); and (3) ensure that it does not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations. Further, NASD is amending Rule 4300A to require

¹⁷ See, Regulation NMS Approval Order at 37543.

¹⁸ See, Regulation NMS Approval Order at 37543.

that ADF Trading Centers provide direct electronic access to any registered broker-dealer that requests it.

At the request of SEC staff, NASD also is amending Rule 4300A(d)(1), to require ADF Trading Centers to use a communication service(s) that is deemed sufficient by NASD. To facilitate this effort, NASD staff will develop and post on the NASD website a list of NASD approved private sector connectivity providers (e.g., financial extranet services and direct market access firms). To remain current with industry practice, the list will be reviewed periodically and updated on an as needed basis. NASD staff will not necessarily review the technical functionality of the various connectivity providers, but will assess the reliability, cost effectiveness and the extent to which the service is sufficiently prevalent among firms that require the ability to route orders to an ADF Trading Center to meet their Order Protection Rule obligations. In addition, while NASD staff will evaluate the level and cost of accessing ADF Trading Centers on a case-by-case basis, ADF Trading Centers are required to be accessible through at least two approved connectivity providers.¹⁹ Also, in conformity with the guidance provided by the Commission in the Regulation NMS Approval Order, NASD will expect ADF Trading Centers to defray connectivity costs to the extent that the level and cost of access offered

¹⁹ It is important to note that the approved private sector connectivity provider list will not serve as an exclusive list of connectivity options for accessing an ADF Trading Center. For instance, to the extent a market participant deems it necessary, it could choose to connect to an ADF Trading Center via a dedicated telecommunications line. However, an ADF Trading Center would not be obligated to provide such dedicated access if it is accessible through at least two providers on the approved list.

by ADF Trading Centers is not substantially equivalent to the level and cost of access offered generally by SRO trading facilities.²⁰

Second, NASD is proposing change as to its Certification Record process to address the standards set forth in SEC Rule 610, including requiring documentation that demonstrates that ADF Trading Center costs are substantially equivalent with costs of accessing SRO trading facilities generally.²¹ The Certification Record process will specifically require ADF Trading Centers to make representations that they are able to comply with the various requirements of SEC Rule 610. To that end, one of the goals of NASD's amended Certification Record process is to make certain that ADF Trading Centers possess technology capable of offering automated quotations (i.e., that ADF Trading Centers are capable of immediate internal order turnaround times not to equal or exceed one second). As noted above, the Commission has tasked NASD with making an affirmative determination as to the extent to which ADF Trading Centers offer substantially equivalent level and cost of access relative to SRO trading facilities. This will require NASD staff to consider the ADF Trading Center's system functionality

²⁰ See, Regulation NMS Approval Order at 37541. The Commission stated that “[u]nder Rule 610(b)(1) . . . ADF participants will be required to bear the costs of the necessary connectivity to facilitate efficient access to their quotations.”

²¹ In this regard, NASD is required to evaluate “substantially equivalent” cost of access on a per transaction basis. As the Commission noted in the Regulation NMS Approval Order, this cannot be evaluated in terms of absolute dollars. For example, in evaluating access a \$1,000 port charge for an ECN participating in ADF that trades one million shares per day would not be substantially equivalent to a \$1,000 port fee charged by an SRO trading facility trading 100 million shares per day. See, Regulation NMS Approval Order at 37543. In evaluating “substantially equivalent” cost of access, NASD will look at cost related to directly accessing SRO trading facilities generally. Specifically, NASD will look at ADF Trading Center and SRO connectivity costs such as line costs and port charges. In addition, NASD will also consider costs associated with SRO membership in evaluating “substantially equivalent” costs.

robustness, the ability of market participants to interface efficiently with the ADF Trading Center's system, and the fee structure of the ADF Trading Center. The Certification Record process will be used to inform NASD in these areas and is discussed in greater detail later in this document.

Third, NASD is amending Rule 4400A to provide standing for all registered broker-dealers, not just members, to file a direct or indirect access complaint with NASD. This will ensure that there is a process in place for promptly addressing claims that an ADF Trading Center is preventing or inhibiting efficient access to its quotations.²² Further, NASD will allow such complaints to be filed via facsimile, e-mail, personal delivery, courier or overnight mail. It is NASD's belief in amending Rule 4400A that NASD will be notified when issues concerning a limitation or denial of access arise. Moreover, the process specified in Rule 4400A will allow NASD to promptly address such issues and, if it is determined that there has been or there is an ongoing limitation or denial of access, NASD will limit, as appropriate and necessary, an ADF Trading Center's participation in ADF, including the withdrawal of its quotations from ADF, until access is provided.²³

²² Proposed Rule 4400A allows any registered broker-dealer to file a direct or indirect access complaint against an ADF Trading Center with NASD to allege a denial of or limitation on access. It should be noted, however, that the filing of a frivolous direct or indirect access complaint by an NASD member could constitute a violation of Rule 2110.

²³ The Commission noted in the Regulation NMS Approval Order that, if an ADF participant is not complying with these access standards, NASD would have a responsibility to stop publishing the participant's quotations until the participant comes into compliance. See, Regulation NMS Approval Order at 37543. Rule 4400A is being amended to expressly incorporate this authority.

Fourth, through the examination process and annual compliance questionnaires, NASD will review the activities of ADF Trading Centers. With respect to the Access Rule, NASD's automated surveillance for certain aspects of the Access Rule will again be complemented through the review of relevant NASD members' supervisory procedures through the TMMS examination program. NASD also plans to use annual compliance questionnaires to determine on-going compliance with requirements such as "substantially equivalent" access, access fees and conditions on access.

Lastly, NASD is proposing to adopt a new Rule 3390 that requires members to reasonable avoid locking or crossing a quotation in NMS stock during regular trading hours, unless it meets a specified exception, and to avoid displaying manual quotations that lock or cross any quotation in an NMS stock previously disseminated pursuant to an effective NMS Plan. This new Rule 3390 is being adopted in conformity with the SRO requirements set forth in the Access Rule.

The SEC staff asked each of the SROs to ensure that its locking or crossing quotation rules are generally consistent among the SROs. NASD is replacing this Rule in the 4000 series because the ADF is the only facility NASD currently provides that allows its members to display quotations in NMS stock. Further, Rule 4613A is being amended to delete provisions that currently prohibit locked or crossed intra-market quotations during regular trading hours. This is being proposed because new Rule 4130A will be applied during regular trading hours, rather than Rule 4613A. The provisions in Rule 4613A, however, that address locked or crossed quotation conditions in the ADF prior to opening the market will remain. Rule 4613A also is being modified to clarify the application of this rule in a Regulation NMS environment.

C. Making Conforming Changes to Reflect New Numbering of SEC Rules in Regulation NMS

NASD also is making conforming changes to certain NASD rules to reflect the new numbering of SEC rules in Regulation NMS. To simplify the structure of the rules adopted under Section 11A of the Exchange Act (“NMS rules”), the SEC renumbered previously adopted NMS rules, incorporated such rules into Regulation NMS and established a new definitional rule, Rule 600. Accordingly, NASD is proposing to update all references to the NMS rules to reflect the new SEC rule numbers.²⁴

D. Overview of NASD Certification Record Process

Also, critical to NASD’s Regulation NMS compliance effort is the establishment of an enhanced Certification Record process for ADF Trading Centers. In light of the importance of the Certification Record process to NASD’s Regulation NMS program, NASD is filing with the SEC a copy of its proposed Certification Record with this rule filing.²⁵ Each enumerated item on the ADF Trading Center Certification Record must be certified to by a duly authorized representative²⁶ of the ADF Trading Center at the time of initial application to become an ADF participant. Moreover, recertification of the

²⁴ NASD also is proposing to delete the requirement currently found in Rule 4613A(e) that requires a member that uses an ADF terminal or other electronic interface to have available in close proximity to the ADF terminal or interface a service that disseminates the bid price and offer price from all markets trading that security. NASD is proposing this change to reflect changes that the SEC made to the Vendor Display Rule when adopting SEC Rule 603.

²⁵ NASD is amending Rule 4200A to define the term “Certification Record.” In addition, Rule 4300A also is being amended to expressly require compliance with the “terms agreed to in the Certification Record.”

²⁶ This representative typically should be the Chief Compliance Officer or other principal with appropriate oversight responsibilities.

ADF Trading Center Certification Record must be required within 30 days of the end of each ADF Trading Center fiscal year.²⁷

The ADF Trading Center Certification Record will include, at a minimum, the specific certifications listed below (in substantially the form described below) and will require that supporting documentation be filed with NASD to demonstrate that the certifications are reasonably supported.²⁸ However, as noted in proposed Rule 4300A(c), acceptance of an ADF Trading Center's Certification Record does not relieve an ADF Trading Center of any of its on-going obligations and shall not constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding.

i. Order Protection Rule Certification

Consistent with the Order Protection Rule, an ADF Trading Centers will be required to certify that it monitors in real time protected quotations, including the protected quotations of other ADF Trading Centers and SRO trading facilities,²⁹ and that it has implemented a industry clock synchronization protocol such that the ADF Trading

²⁷ It should be noted that current ADF Trading Centers also would be required to be re-certified prior to the implementation of Regulation NMS. Accordingly, there will be no "grandfather" allowance for current ADF Trading Centers.

²⁸ For example, as part of the certification process NASD staff will require ADF Trading Centers to certify and demonstrate that they offer fair and non-discriminatory access to any person as required by Regulatory NMS. NASD staff generally anticipates that ADF Trading Centers will demonstrate offering the requisite fair and non-discriminatory access by providing NASD staff with relevant documentation, including: (i) subscriber criteria (including types of subscriber classes, if applicable); (ii) subscriber agreement (or relevant contractual agreement language related to subscriber rights and restrictions of use); (iii) fee schedules (including relevant rebates, discounts, capacity charges, etc.); (iv) compatible data interface protocols; and (v) connectivity options.

²⁹ See, 17 CFR 242.600(b)(72).

Center's internal clock used for Regulation NMS compliance purposes is set to Eastern Standard Time and is corrected to the NIST Atomic Clock, and in no event is the ADF Trading Center's internal clock more than one second away from the NIST Atomic Clock. As noted above, and required by Rule 4300A(e), ADF Trading Centers also will be required to certify that they will submit only "automated quotations"³⁰ for display on the ADF and that under no circumstances will a manual quotation be submitted (including a quotation that otherwise would be an automated quotation, but for a trading center system error, malfunction, latency, etc.). Moreover, ADF Trading Centers will be required to certify that they offer immediate-or-cancel order execution functionality for execution against their protected quotations and that such functionality is offered to those required to be granted access to protected quotations. ADF Trading Centers also will be required to certify that their order response time will at least meet the response time required for its quotations to qualify as automated quotations under Regulation NMS. In addition, ADF Trading Centers will be required to further certify that in no event will their inbound order response time be equal to or greater than 1.00 elapsed second and in no event will their immediate response to inbound orders require any human discretion for completion.

ii. Access Rule Certifications

NASD is proposing significant revisions to its ADF Trading Center Certification Record process to ensure compliance with the Access Rule. In addition to access and order reporting requirements expressly set forth in proposed Rule 4300A, many of the certifications seek to further ensure that each ADF Trading Center will "provide a level

³⁰ See, 17 CFR 242.600(b)(3).

and cost of access” to quotations displayed through the ADF “that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities.”³¹ ADF Trading Centers will be required to certify that they offer fair and non-discriminatory access. Moreover, ADF Trading Centers must provide documentation demonstrating that they are complying with these requirements. Further, ADF Trading Centers will be required to certify their acknowledgment that, to the extent that NASD deems an ADF Trading Center not to be granting the requisite level and cost of access, that ADF Trading Center will be required by NASD to defray the connectivity costs of those persons entitled to access the ADF Trading Center. In addition, ADF Trading Centers will be required to certify that, if they charge a fee in excess of the fee cap for accessing orders other than protected quotations, they will provide functionality that prevents market participants from inadvertently accessing a non-protected quotation and being charged a fee in excess of the fee cap.

An ADF Trading Center also will acknowledge through the Certification Record process that NASD will not permit an ADF Trading Center’s quotations to be displayed through the ADF, unless NASD determines that sufficient public notice has been provided of the ADF Trading Center’s intention to display quotations through the ADF at least 60 days in advance of such activity and, at least initially, in conformity with the standard set forth by the SEC in its order extending certain Regulation NMS compliance dates.³² With regard to an ADF Trading Center that displays quotations in the ADF prior

³¹ 17 CFR 242.610.

³² See, Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) that requires ADF participants to meet the new automation requirements discussed above to qualify.

to the implementation of Regulation NMS and seeks to continue uninterrupted quoting on the ADF after Regulation NMS implementation, such ADF Trading Center also must comply with this 60-day public notice period in advance of Regulation NMS implementation.

NASD will require that such advance notice be given through reasonable means (e.g., through press releases, the NASD web site, and the ADF Trading Center's web site). Further, ADF Trading Centers also will be required to certify as part of the pre-quotation notice period that they have made publicly available through reasonable means relevant connectivity and access technical specifications, including: (i) technical interface specifications (e.g., compatible system protocols, etc.); (ii) testing schedules; (iii) connectivity providers (e.g., extranet providers and direct market access firms) through which the ADF Trading Center's quotations may be accessed; and (iv) all relevant subscriber and non-subscriber fees, access fees, port fees, connectivity fees and rebates.

II. Extend ADF Quoting, Trade Reporting and Clearing Functionality to All NMS Stock

NASD is amending rules that govern quoting, trade reporting and clearing through the ADF to extend this functionality to all NMS stock, as defined in SEC Rule 600(b)(47). Currently, the ADF only accommodates the quoting, trade reporting and clearing of Nasdaq securities, but this proposal would allow for the quoting, trade reporting and clearing of NYSE, AMEX and certain other regional listed-securities. Specifically, NASD is changing the definition of "ADF-eligible security" to include all NMS stock, as defined in SEC Rule 600(b)(47). In addition, NASD is amending ADF

rules to adopt uniform rules governing quoting and trade reporting of Nasdaq, NYSE, AMEX and certain other regional listed-securities.

Since NASD is incorporating the requirements to quote and trade report for all NMS stock directly into the ADF rules, NASD will no longer need a separate set of rules (currently found in the Rule 6300 and 6400 Series) governing the quoting and trade reporting of NYSE, AMEX and certain other regional securities.³³ Therefore, NASD is deleting the rules currently found in the Rule 6300 and 6400 series.³⁴ Further, in conformity with the new standards articulated in Regulation NMS, NASD does not intend to be a participant of the Intermarket Trading System Plan (“ITS Plan”) or the new National Market System Linkage Plan (“NMS Linkage Plan”). Instead, ADF quotes in all NMS stock will be accessible through private connectivity providers in accordance with the proposed quote and order access requirements set forth in Rule 4300A. As discussed previously, this requires, among other things, that ADF Trading Centers provide direct electronic access to other ADF market participants and direct or indirect electronic access to all other registered broker-dealers seeking such access. Accordingly, because NASD does not intend to participate in the ITS Plan or the new NMS Linkage

³³ It should be noted that while ADF rules will be applied in a uniform manner to all NMS stock to the extent possible, NMS stock is subject to two separate transaction reporting plans. Nasdaq securities are governed by the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (UTP Plan) and NYSE, AMEX and certain other regional securities are governed by the Consolidated Quotation Plan (CQ Plan) and the Consolidated Tape Association Plan (CTA Plan).

³⁴ It should be noted that while the NASD is deleting the Rule 6300 and 6400 series, many of the same requirements set forth in the Rule 6300 and 6400 series are being incorporated expressly into the amended ADF rules.

Plan, the Rule 5200 Series (containing ITS Rules) is being deleted in its entirety. Lastly, corresponding changes are being made to the Rule 6100A Series that governs the use of the TRACS Trade Comparison Service to reflect the inclusion of all NMS stock in the ADF.

III. Reorganize ADF Trade Reporting Rules to Enhance the Clarity of the Rules

NASD is amending the ADF trade reporting rules to enhance their clarity.

Specifically, NASD is proposing to amend Rule 4630A to clarify that transactions executed otherwise than on an exchange must be reported to ADF TRACS, in accordance with Rule 4632A or another pertinent NASD rules, unless they are reported to another facility designated by the SEC as being authorized to accept trade reports for trades executed otherwise than on an exchange.³⁵ In addition, NASD is amending Rule 4632A to reorganize the ADF trade reporting rules. NASD is also amending Rule 4632A to require members to report execution time in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included on the report.³⁶

³⁵ See e.g., Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR-NASD-2005-087) (establishing, among other things, rules for the trade reporting of transactions otherwise than on an exchange through the new Trade Reporting Facility).

³⁶ As described previously in the Order Protection Rule discussion, NASD also is changing the required modifiers set forth in Rule 4632A(a) to more closely align them with Regulation NMS and is inserting a general provision that requires members to report “any other modifier as specified by NASD or the Securities and Exchange Commission.”

In general, NASD is inserting in Rule 4632A(a) the same requirements that were previously found in Rule 5430(a).³⁷ NASD is, however, rearranging the order of certain requirements and changing the headings (or adopting additional headings) to provide clarity. In addition, NASD is proposing to use consistent terms, whenever appropriate, throughout this rule. For example, NASD is referring to “member” obligations whenever possible, rather than listing all the different types of members that are subject to the particular rule.

NASD also is proposing to amend Rule 4632A(b) to set forth which party is responsible for reporting transactions to NASD. These proposed rules are being simplified to delineate reporting responsibility between registered reporting members, non-registered reporting members, and customers or non-members. In general, Rule 4632A(b) requires the following: (1) transactions executed on an exchange are not to be reported to TRACS by members; (2) in transactions between two registered reporting members, the sell side shall report the trade; (3) in transactions between a registered reporting member and non-registered reporting member, the registered reporting member is required to report the trade; (4) in transactions between two non-registered reporting members, the sell side shall report the trade; (5) in transactions between a member and a customer or non-member, the member shall report the trade.³⁸

NASD also is amending Rule 4632A(f). Currently, Rule 4632A(f) allows for the aggregation of transaction reports under certain circumstances. NASD is proposing to

³⁷ It should be noted that certain definitions previously found in Rule 5420, such as stop stock transactions, are being expressly incorporated into Rule 4200A.

³⁸ Rule 4200A definitions were also amended to ensure the terms “registered reporting member” and “non-registered reporting member” used in the transaction reporting rules are defined terms.

amend Rule 4632A(f) to expressly prohibit aggregation of individual execution of orders in a security at the same price into a single transaction report. NASD has determined that it no longer will allow members to bunch transactions for reporting purposes. By prohibiting bunching, the NASD is ensuring greater transparency of individual transactions. NASD also is amending Rule 4632A(1) to clarify a member obligation under ADF rules to report cancelled trades in a timely manner. Lastly, NASD is amending the Rule 6100A series concerning the TRACS Trade Comparison Service to use terminology consistent with the ADF rules found in the Rule 4000A series.³⁹

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date of the proposed rule change will be on or before February 5, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴⁰ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As noted above, NASD is filing this rule proposal in order to align NASD Rules with Regulation NMS and to allow for the quoting, trade reporting and clearing of all NMS stock through the ADF. NASD believes these goals are consistent with 15A(b)(6) and

³⁹ NASD also is amending Rule 4120A to add a provision that addresses extraordinary market activity. This clarifies that NASD, in its discretion, may initiate trading halts or close the ADF under certain circumstances.

⁴⁰ 15 U.S.C. 78o-3(b)(6).

that this rule proposal facilitates the goals articulated in Regulation NMS, including providing an effective mechanism and regulatory framework for the over-the-counter market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. 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. Please include File Number SR-NASD-2006-091 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-091. 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-2006-091 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴¹

Nancy M. Morris

Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

**ADF Trading Center
Certification Record**

<i>Regulation NMS-Compliant Certifications*</i>	<i>Certification Signature</i>
<p>(1) <u>Certification Scope</u> – ADF Trading Center certifies its acknowledgement that this ADF Trading Center Certification Record is intended to assist NASD in determining that ADF Trading Center is capable of meeting ADF Trading Center’s Regulation NMS obligations and otherwise meeting the terms of the certifications enumerated below. ADF Trading Center certifies its acknowledgement that neither this ADF Trading Center Certification Record nor the act of NASD certifying ADF Trading Center for quoting on the ADF and/or trade reporting through TRACS shall constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding.</p>	
<p>(2) <u>Real Time Monitoring of Protected Quotations</u> – ADF Trading Center certifies that it monitors in real time away market protected quotations, including the protected quotations of other ADF Trading Centers and SRO trading facilities, and that it has implemented a clock synchronization protocol such that ADF Trading Center’s internal clock used for Regulation NMS compliance purposes is set to Eastern Standard Time and is corrected to the NIST Atomic Clock, and in no event is the ADF Trading Center’s internal clock more than one second away from the NIST Atomic Clock.</p>	
<p>(3) <u>Automated Quotations</u> – ADF Trading Center certifies that it will submit only automated quotations for posting on the ADF and that under no circumstances will a manual quotation be submitted (including a quotation that otherwise would be an automated quotation, but for a Trading Center system error, malfunction, latency, etc.)</p>	

* See Regulation NMS, SEC Rule 600, 17 CFR § 242.600, for defined terms throughout the certification.

<i>Regulation NMS-Compliant Certifications*</i>	<i>Certification Signature</i>
<p>(4) <u>Order Response Time</u> - ADF Trading Center certifies that it offers immediate-or-cancel order execution functionality for execution against its protected quotations and that such functionality is offered to those required to be granted access to protected quotations, including other NASD members and other ADF Trading Centers. ADF Trading Center certifies that its order response time will at least meet the response time required for its quotations to qualify as automated quotations. ADF Trading Center certifies that in no event will its order response time be equal to or greater than 1.00 elapsed second and in no event will its immediate response to orders require any human discretion for completion.</p>	
<p>(5) <u>Fair and Non-Discriminatory Access</u> – ADF Trading Center certifies that it offers and has demonstrated to the full satisfaction of NASD that ADF Trading Center offers fair and non-discriminatory access to any person as required by Regulation NMS.</p>	
<p>(6) <u>Access Fee Cap Order Designator</u> - ADF Trading Center certifies that, if it intends to charge a fee in excess of the fee cap for accessing orders other than protected quotations, such ADF Trading Center provides functionality that enables market participants to assure that they will not inadvertently be charged a fee in excess of the fee cap.</p>	
<p>(7) <u>Substantially Equivalent Level and Cost of Access</u> - ADF Trading Center certifies that it provides and has demonstrated to the full satisfaction of NASD a level and cost of access that is substantially equivalent to that offered by SRO trading facilities generally and that ADF Trading Center has submitted sufficient documentation to substantiate this certification.</p>	
<p>(8) <u>Defray Costs</u> - ADF Trading Center certifies that, to the extent that NASD deems such ADF Trading Center not to be granting the requisite level and cost of access, ADF Trading Center will be required by NASD to defray the connectivity costs of those persons entitled to access ADF Trading Center.</p>	

<i>Regulation NMS-Compliant Certifications*</i>	<i>Certification Signature</i>
<p>(9) <u>60-Day Pre-Quotation Display Notice</u> – ADF Trading Center certifies its acknowledgement that NASD will not permit ADF Trading Center quotations to be displayed through the ADF unless NASD determines that sufficient public notice has been provided of the ADF Trading Center’s intention to display quotations through the ADF at least 60 days in advance of such activity. With regard to an ADF Trading Center that displays quotations in the ADF prior to the implementation of Regulation NMS and seeks to continue uninterrupted quoting on the ADF after Regulation NMS implementation, such ADF Trading Center must comply with this 60-day public notice period in advance of Regulation NMS implementation. Such advance notice must be given through reasonable means (<u>e.g.</u>, through press releases, their web site, the NASD web site, and other NASD-sponsored information publication channels (<u>e.g.</u>, e-mail push alerts)).</p>	
<p>(10) <u>Connectivity / Access</u> – ADF Trading Center certifies that, as part of its providing sufficient public notice prior to displaying quotations through the ADF, ADF Trading Center will make publicly available through reasonable means (<u>e.g.</u>, through ADF Trading Center press releases, on ADF Trading Center web site, on NASD web site, and through other NASD sponsored information publication channels) relevant connectivity and access specifications, including:</p> <ul style="list-style-type: none"> (i) technical interface specifications (<u>e.g.</u>, compatible system protocols, etc.); (ii) testing schedules; (iii) connectivity providers (<u>e.g.</u>, extranet providers and direct market access firms) through which ADF Trading Center quotations may be accessed; and (iv) all relevant subscriber and non-subscriber fees, access fees, port fees, connectivity fees and rebates. 	
<p>(11) <u>ADF Order Reports</u> - If ADF Trading Center terminates transmitting ADF order reports to NASD at the end of the same trading day in which it last posted an ADF quote (rather than the day following the trading day in which it last posted an ADF quote), ADF Trading Center certifies that it is able to determine the time at which it ceased posting ADF quotes.</p>	

<i>Regulation NMS-Compliant Certifications*</i>	<i>Certification Signature</i>
<p>(12) <u>Intra-Day Staff Availability</u> - ADF Trading Center certifies that it will make its Chief Compliance Officer or other principal with appropriate oversight responsibilities available during ADF trading hours to respond to ADF Operations inquiries concerning ADF Trading Center operations. ADF Trading Center acknowledges that ADF Operations has full discretion to remove ADF Trading Center quotations from the ADF to the extent that ADF Operations is unable to contact or receives an insufficient response from ADF Trading Center's Chief Compliance Officer or other principal with appropriate oversight responsibilities in connection with a material ADF Trading Center operations matter.</p>	

EXHIBIT 5

Text of Proposed Rule Change. Proposed new language is underlined; proposed deletions are in brackets. The underlying rule text for the changes below is based on changes made in SR-NASD-2005-087. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006, and these changes will become effective on the date upon which The Nasdaq Stock Market LLC operates as a national securities exchange for Nasdaq-listed securities. Currently, that date is projected to be August 1, 2006.

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 1 — Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) No Change.

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (D) No Change.

(E) Transactions that are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in [Rule 11Aa3-1] SEC Rule 600(b)(81) and any approved plan filed [thereunder] in accordance with SEC Rule 11Aa3-1 or SEC Rule 601;

(F) through (L) No Change.

(3) through (4) No Change.

(c) through (d) No Change.

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

4100A. GENERAL

NASD Alternative Display Facility (also referred to as "ADF") is the facility operated by NASD on a pilot basis for members that choose to quote or effect trades in [Nasdaq National Market and Nasdaq Capital Markets securities and convertible bonds listed on Nasdaq ("ADF-eligible securities")] ADF-eligible securities otherwise than on an exchange. The ADF collects and disseminates quotations and trade reports, and compare trades through TRACS Trade Comparison Service. Those NASD members that use ADF systems for quotation or [trading] trade reporting activities must comply with the Rule 4000A and Rule 6000A Series, as well as all other applicable NASD Rules and the federal securities laws. The ADF pilot will expire on January 26, 2007.

* * * * *

4120A. Trading Halts

(a) Authority to Initiate Halts In Trading on the Alternative Display Facility

[NASD, pursuant] Pursuant to the procedures set forth in paragraph (b), NASD shall:

(1) [shall] halt trading otherwise than on an exchange in the [Alternative Display Facility] ADF in an ADF-eligible security whenever any market that has the authority to [call] initiate a regulatory halt in the security imposes a trading halt, or suspends the listing, to:

- (A) permit dissemination of material news;
- (B) obtain information from the issuer relating to material news;

(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or

(D) obtain any other information that is necessary to protect investors and the public interest.

(2) [shall] halt trading otherwise than on an exchange in the [Alternative Display Facility] ADF in an ADF-eligible security when:

(A) extraordinary market activity in the security is occurring, [such as] including but not limited to the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer;[,] and

(B) NASD determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C) (i) NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or

(ii) After consultation with a national securities exchange trading the security, NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.

(3) [shall] close [NASD Alternative Display Facility] the ADF to quotation and trade reporting activity whenever [NASD's Alternative Display Facility] the ADF is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor. If the ADF closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) No Change.

4130A. Prohibition from Locking or Crossing Quotations in NMS Stocks

(a) Definitions. For purposes of these Rules, the following definitions shall apply:

(1) The terms “automated quotation,” “National Market System Plan” (NMS Plan), “intermarket sweep order,” “manual quotation,” “NMS stock,” “protected quotation,” “regular trading hours,” and “trading center” shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(2) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective NMS Plan, or the display of an offer for an NMS stock during regular trading

hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective NMS Plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective NMS Plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective NMS Plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective NMS Plan.

(c) Manual quotations. NASD prohibits the display of manual quotations in the Alternative Display Facility, as specified in Rule 4300A. However, if a member displays a manual quotation in another NASD facility that locks or crosses a quotation previously disseminated pursuant to an effective NMS Plan, such member shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

4200A. DEFINITIONS

(a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule [11Aa3-1] 600.

(1) No Change.

(2) "ADF-eligible security" means an NMS stock as defined in SEC Rule 600(b)(47) [Nasdaq National Market, Nasdaq SmallCap Market security and Nasdaq Convertible Debt securities].

(3) No Change.

(4) "ADF Trading Center" means a Registered Reporting ADF Market Maker, or a Registered Reporting ADF ECN that is a "Trading Center," as defined in SEC Rule 600(b)(78), and that is certified, pursuant to Rule 4300A, to display its quotations or orders through the ADF.

(5) "Certification Record" means the document that an ADF Trading Centers must execute and continue to comply with, pursuant to Rule 4300A, to display its quotations through the ADF.

(6) "CQS security" is a security that is eligible for inclusion in the Consolidated Quotation Plan and reported to the Consolidated Tape in accordance with the Consolidated Tape Association Plan. These securities include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges which have been designated by such regional exchange as eligible for reporting to the Consolidated Tape.

(7) "Initial Public Offering" shall mean a security is subject to an initial public offering if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.

[(4)] (8) "Nasdaq" means the NASDAQ Stock Market, LLC. [and its facilities] other than any facilities operated by The NASDAQ Stock Market, LLC on behalf of NASD.

[(5) "Nasdaq National Market" or "NNM" is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.]

[(6)] (9) "Nasdaq security" means [a security that is listed on Nasdaq] any security listed on The NASDAQ Stock Market, LLC.

[(7) "Nasdaq Capital Market" is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq Capital Market Security.]

(10) "Non-Registered Reporting Member" means a member of NASD that is not a Registered Reporting Member.

[(8)] (11) No Change.

[(9)] (12) No Change.

[(10)] (13) "Registered Reporting ADF ECN" means a member of NASD that is an electronic communications network ("ECN") that elects to display orders in NASD's [Alternative Display Facility] ADF. [A member is a Registered Reporting ADF ECN in only those designated securities for which it is registered with NASD.] A member shall cease being a Registered Reporting ADF ECN [in a designated security] when it has withdrawn or voluntarily terminated its quotations [in that security] on the ADF or when its quotations have been suspended or terminated by action of NASD. This term also shall include an NASD member that is an alternative trading system ("ATS") that displays orders in [NASD's Alternative Display Facility] the ADF.

[(11)] (14) No Change.

[(12)] (15) No Change.

[(13)] (16) No Change.

[(14) "Underwriting Activity Report" is a report provided by the Market Regulation Department of NASD in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11).]

[(15)] (17) No Change.

[(16)] (18) No Change.

(19) "Underwriting Activity Report" is a report provided by the Market Regulation Department of NASD in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11).

(b) No Change.

4300A. Quote and Order Access Requirements

(a) [To ensure that ADF Market Participants comply with their quote and order access obligations as defined below, for] For each security in which [they elect to] an ADF Trading Center displays a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the [Alternative Display Facility] ADF, [ADF Market Participants] it must:

(1) Provide other [NASD Market Participants] ADF Trading Centers direct electronic access, as defined below; [and]

(2) Provide [NASD member] registered broker-dealers that are not ADF Trading Centers [Market Participants] direct electronic access, if requested, and allow for indirect electronic access, as defined below. In any event, an ADF Trading Center [Market Participant] is prohibited from: (A) in any way directly or indirectly influencing or prescribing the prices that [their] its customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or

discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access; [.]

(3) Provide a level and cost of access to its quotations in an NMS stock displayed in the ADF that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that NMS stock;

(4) Demonstrate that it has sufficient technology to automatically update its quotations and immediately respond to orders for execution directly against the individual ADF Trading Center's best bid or offer;

(5) Ensure that it does not impose unfairly discriminatory terms that prevent or inhibit any person, through a registered broker-dealer, from obtaining efficient access to such quotations;

[(3)] (6) Provide at least 14 calendar days advance written notice, via facsimile, personal delivery, courier or overnight mail, to [NASD Alternative Display Facility] ADF Operations before denying any [NASD member] registered broker-dealer direct electronic access as defined below. [An ECN is the only Market Participant that may lawfully deny access to its quotes, and an ECN may only do so in the limited circumstance where a broker-dealer fails to pay contractually obligated costs for access to the ECN's quotes.] The notice provided hereunder must be based on the good faith belief of an ADF Trading Center [Market Participant] that such denial of access is appropriate and does not violate any of the ADF Trading Center's [Market Participant's] obligations under NASD rules or the federal securities laws. Further, any notification or publication of an

ADF Trading Center's [Market Participant's] intent to deny access will have no bearing on the merits of any claim between the ADF Trading Center [Market Participant] and any affected registered broker-dealer, nor will it insulate the ADF Trading Center [Market Participant] from liability for violations of NASD rules or the federal securities laws, such as SEC Rule [11Ac1-1] 602. The 14-day period begins on the first business day that [NASD Alternative Display Facility] ADF Operations has receipt of the notice; and [.]

[(4) Share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.]

(7) Comply with the minimum performance standards set forth in (e) of this rule and the terms agreed to in the Certification Record.

(b) Subject to the terms and conditions contained herein, all ADF Trading Centers [Market Participants] that display quotations in NASD's [Alternative Display Facility] ADF must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive from another broker-dealer via direct or indirect electronic access, and report this information to NASD as specified below.

(1) ADF Trading Centers [Market Participants] must record the following information for every order they receive from another broker-dealer via direct or indirect electronic access during the trading day:

(A) through (I) No Change.

(J) Order Time (expressed in hours, minutes and seconds based on Eastern Time in military format [including seconds])

(K) through (M) No Change.

(N) Any other modifier as specified by NASD or the Securities and Exchange Commission

The information described in paragraphs (A) through [(M)] (N) must be reported to NASD within 10 seconds of receipt of the order.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), ADF Trading Centers [Market Participants] must record the following information, as applicable, for every order received via direct or indirect access from another broker-dealer that has been acted upon or responded to:

(A) No Change.

(B) Order Response (i.e. E=Execute, D=Decline due to potential SEC Rule 611 violation, O= Decline Other, X=Cancel, T=[t]Timed out, P=[p]Partial, I=Price improvement)

(C) Order Response Time (expressed in hours, minutes and seconds based on Eastern Time in military format [including seconds])

(D) through (E) No Change.

The information described in paragraphs (A) through (E) must be reported to NASD within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in (b)(1) and (b)(2).

(3) No Change.

(4) Orders Not Required To Be Recorded

The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via [ITS or] any system operated by a national securities exchange or national securities association such that the association or exchange operating the system has access to and regulates that order activity.

(5) through (6) No Change.

(7) Withdrawal of Quotations

If an ADF Trading Center [Market Participant] knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the [member] ADF Trading Center must withdraw its quotations from [NASD's Alternative Display Facility] the ADF until such time that the member is satisfied that it is in compliance with the requirements of this Rule [its order information is being properly recorded and reported].

(c) ADF Trading Centers [Market Participants] are required to specify as part of their [NASD Alternative Display Facility Workstation Subscriber Agreement] Certification Record the method and terms by which they will comply with the requirements of this Rule. NASD [staff] will not allow an ADF Trading Center [approve a Market Participant's Subscriber Agreement] to display quotations in the ADF unless the method and terms provided by the ADF Trading Center [Market Participant] are in compliance with this Rule and applicable provisions of Regulation NMS. Acceptance by NASD of an ADF Trading Center's Certification Record does not relieve an ADF Trading Center of any of its on-going obligations. Moreover, NASD's acceptance of

such Certification Record, shall not constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding.

(d) Definitions

[(1) "Customer broker-dealer" is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.]

[(2)] (1) "Direct electronic access" means the ability to deliver an order for execution directly against an individual ADF Trading Center's [Market Participant's] best bid [and] or offer subject to applicable NASD rules and the federal securities laws, including Regulation NMS. [quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost (as permissible under the federal securities laws, the rules and regulations thereunder, and the NASD Rules), as are made available to an ADF Market Participant's own customer broker-dealers or other active customers or subscribers.] As described herein, ADF Trading Centers must provide direct electronic access, in conformity with this rule, through the use of a communications service(s) that is deemed to be sufficient by NASD.

[(3)] (2) "Indirect electronic access" means the ability to route an order through an NASD member, subscriber broker-dealer, or customer broker-dealer[s] of an ADF Trading Center [Market Participant] that are not an affiliate[s] of [an] the ADF Trading Center [Market Participant], for execution against the ADF Trading Center's [NASD Market Participant's] best bid or [and] offer subject to

applicable NASD rules and the federal securities laws, including Regulation NMS [quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers]. An ADF Trading Center shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotation through an NASD member, subscriber broker-dealer, or customer broker-dealer. An NASD member [ADF Market Participant's customer broker-dealers] that is providing indirect electronic access shall remain responsible for [all] orders routed through [them] it as though the orders were the firms' own orders.

[(4) "Best bid and offer" for purposes of this Rule includes the best-priced buy and sell orders of an ADF Market Participant.]

[(5) "Quote and Order Access Obligations" include the requirements under this Rule, the firm quote obligations under Rule 11Ac1-1 under the Act, and for ADF Registered ECNs, the standards under Rule 11Ac1-1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSS, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613A(d) and providing access to any reserved size orders as required by Rule 4623A(c).]

(e) Minimum Performance Standards

(1) [Direct electronic access provided by] ADF Trading Centers [a Market Participant] must submit “Automated Quotations”, as defined in SEC Rule 600 to the ADF for posting. [allow the Market Participant the technological ability to respond to an order in two seconds or less. The two-second standard shall be measured from the time an order is received from the broker-dealer sending the order to the time an execution report or notice to decline the order is sent from the Market Participant to the broker-dealer that sent the order. With respect to orders received from other Market Participants, Market Participants must have in place a system that can accomplish turnaround of an order in three or fewer seconds, measured from the time an order is released by a Market Participant until the time an execution report is received by the Market Participant that placed the order.] “Manual Quotations,” as defined in SEC Rule 600, shall not be submitted to the ADF. As a precondition to becoming an ADF Trading Center [a registered member of NASD Alternative Display Facility], an ADF Trading Center [Market Participants] must, among other things, certify to NASD their compliance with this paragraph based on reasonable forecasts of peak volume activity and the establishment of policies and procedures to ensure only “Automated Quotations,” as defined in SEC Rule 600(b)(3), are submitted to the ADF.

(2) In the event that an ADF Trading Center [a Market Participant] experiences three (3) unexcused system outages during a period of five (5) business days, the ADF Trading Center [Market Participant shall] may be

suspended from quoting in [NASD's Alternative Display Facility] the ADF in all or certain issues for a period of twenty (20) business days. For the purposes of this paragraph, with respect to an ADF Trading Center, a “system outage” shall mean an inability to post “Automated Quotations,” as defined by SEC Rule 600(b)(3), [quotations in NASD’s Alternative Display Facility] in the ADF or an inability to immediately and automatically respond to orders.

(3) Officers of NASD or its subsidiaries designated by the President [Chief Executive Officer] of NASD shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the ADF Trading Center [Market Participant] that the system outage resulted from circumstances not within the control of the ADF Trading Center [Market Participant]. The burden shall rest with the ADF Trading Center [Market Participant] to demonstrate that a system outage should be excused.

(4) An ADF Trading Center [A Market Participant] may contact NASD [Alternative Display Facility] ADF Operations and request that a system outage be deemed excused, whether or not the system outage resulted from circumstances within the control of the ADF Trading Center [Market Participant]; however, if NASD [Alternative Display Facility] ADF Operations becomes aware of the system outage prior to the ADF Trading Center’s [Market Participant’s] request for an excused system outage, NASD [Alternative Display Facility] ADF Operations may, at its own discretion, deem the system outage to be unexcused,

based on the specific facts and circumstances surrounding the outage. [In any event, a Market Participant shall be granted no more than five (5) excused system outages within 30 calendar days.]

(f) Procedures for Reviewing System Outages

(1) Any ADF Trading Center [Market Participant] that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to [NASD Alternative Display Facility] ADF Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.

(2) An ADF Trading Center [A Market Participant] that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to NASD staff by the close of business on the day following the system outage.

(3) An ADF Trading Center [A Market Participant] that seeks review of a system outage shall supply NASD staff with any information requested to make a determination pursuant to paragraph (e)(3).

(4) No Change.

(5) An ADF Trading Center [A Market Participant] may appeal a determination made under paragraph (e)(3) to a three-member subcommittee comprised of current or former industry members of NASD's Market Regulation Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the

subcommittee shall operate as a stay of the determination made pursuant paragraph (e)(3). Once a written appeal has been received, the ADF Trading Center [Market Participant] may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the subcommittee. The subcommittee shall render a determination by the close of business following the day a notice of appeal is received. The subcommittee's determination shall be final and binding.

(g) Inactive Quoting

In order to maintain ADF certification, Registered Reporting ADF ECNs must post at least one marketable quote/order through the ADF on each side of the market every 30 calendar days. A quote/order that is posted through the ADF will be presumptively a marketable quote/order if such quote/order is accessed (i.e., traded against) by another trading center or market participant (other than a subscriber of the Registered Reporting ADF ECN). A Registered Reporting ADF ECN that fails to post at least one marketable quote/order through the ADF on each side of the market every 30 calendar days, shall lose its ADF certification at the sole discretion of NASD staff. Registered Reporting ADF ECNs seeking to regain ADF certification shall be required to recertify pursuant to this NASD Rule 4300A.

4400A. Review of Direct or Indirect Access Complaints

(a) Authority to Receive Complaints

(1) For the purposes of this Rule, a "direct or indirect access complaint" is a complaint against an ADF Trading Center [Market Participant], as defined in

Rule 4200A, that alleges a denial or limitation of access in contravention of Rule 4300A or the federal securities laws.

(2) Any [member] registered broker-dealer that wishes to file a direct or indirect access complaint shall submit a written complaint stating the pertinent facts that constitute the grounds for such complaint, via facsimile, e-mail, personal delivery, courier or overnight mail, to ADF Operations and simultaneously serve by the same means the [respondent] ADF Trading Center in accordance with Rule 9134(b). Officers of NASD designated by a President of NASD or one of its divisions shall have the authority to review and make a determination regarding direct or indirect access complaints.

(3) Based upon a review of the complaint and such investigation that the officer, in his or her sole discretion, may decide to conduct, the officer shall promptly determine whether there has been a denial of access by the ADF Trading Center [ADF Market Participant]. If the officer determines that there has been a denial of access in contravention of Rule 4300A or the federal securities laws, the officer shall direct the [offending party] ADF Trading Center to provide access to its ADF quotes and may limit participation in the ADF by such party if it does not comply promptly with the directive, including the withdrawal of the ADF Trading Center's quotations from the ADF until access is provided. NASD shall provide to the parties written notification of the determination by the close of business following the day the determination is rendered. The determination shall be sent to the facsimile number listed in the parties' contact questionnaire submitted to NASD pursuant to Article IV, Section 3 of NASD's By-Laws or

another contact specifically designated by a party. The determination, and any directive to provide access or action to limit participation in the ADF, shall be effective when issued or as specified, and shall remain in effect during any review or appeal. The determination shall not constitute an estoppel as to NASD nor bind NASD in any subsequent administrative, civil, or disciplinary proceeding.

(b) Procedures for Review of Determinations

(1) Any [member] registered broker-dealer, including an ADF Trading Center, that seeks review of a determination issued pursuant to paragraph (a) hereof, shall submit a written appeal setting forth the grounds for such review. The written appeal shall be submitted via facsimile, e-mail, personal delivery, courier or overnight mail, to NASD and served by the same means on the opposite party, in accordance with Rule 9134(b), by close of the next business day after receipt of the written determination. Written appeals that are not served upon NASD and the opposite party by the close of the next business day after receipt of the written determination will not qualify for further administrative consideration, without prejudice as to the rights of a party to submit the dispute to arbitration or another adjudicatory forum.

(2) No Change.

(3) Each [member] registered broker-dealer and/or person associated with a [member] registered broker-dealer involved in the review shall provide NASD with any information that it requests to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above. If a registered broker-dealer does not provide such requested information in a timely

manner, NASD may, in its discretion, consider the matter based upon the information provided. Moreover, if the registered broker-dealer and/or person associated with a registered broker-dealer is a member or person associated with a member, failure to provide requested information can constitute a violation of NASD rules.

(4) No Change.

(c) No Change.

* * * * *

4600A. TRADING IN [NASDAQ] ADF-ELIGIBLE SECURITIES

4610A. Registration and Other Requirements

4611A. Registration as an ADF Market Maker or ADF ECN

(a) Quotations and quotation sizes in [Nasdaq] ADF-eligible securities may be entered into [NASD's Alternative Display Facility] the ADF only by a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN or other entity approved by NASD to function in such a capacity.

(b) An NASD member seeking registration as a market maker or ECN in the ADF shall file an application with NASD specifying whether it is seeking registration in Nasdaq and/or CQS securities. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as an ADF market maker or ECN shall become effective upon receipt by the member of notice of approval of registration from NASD in the designated security type (i.e., Nasdaq and/or CQS).

* * * * *

4613A. Character of Quotations

(a) Two-Sided Quotations

(1) For each [Nasdaq] ADF-eligible security for which a member is a Registered Reporting ADF 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 two-sided quotations through [NASD's Alternative Display Facility] the ADF, subject to the procedures for excused withdrawal set forth in Rule 4619A.

(A) A Registered Reporting ADF Market Maker in an ADF-eligible security [listed on Nasdaq] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule [11Ac1-4,] 604. [provided, however, that a Registered Reporting ADF Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.]

(B) Minimum Price Variation for Decimal-based Quotations

The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be \$0.01. Quotations failing to meet this standard shall be rejected.

(b) Firm Quotations

(1) Consistent with SEC Rule 602 (b)(2), an ADF Trading Center [An ADF Market Participant] that receives an offer to buy or sell from another [NASD member] broker-dealer shall execute a transaction for at least a normal unit of

trading at its displayed quotations as disseminated through [NASD's Alternative Display Facility] the ASF at the time of receipt of any such offer. If an ADF Trading Center [Market Participant] displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another [NASD member] broker-dealer, execute a transaction at least at the size displayed.

(2) If an ADF Trading Center [Market Participant], upon receipt of an offer to buy or sell from another [NASD member] broker-dealer in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through NASD's [Alternative Display Facility] the ADF at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such ADF Trading Center [Market Participant] shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of an ADF Trading Center [Market Participant] to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.

(c) Quotations Reasonably Related to the Market

A Registered Reporting ADF Market Maker [An ADF Market Participant] shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Reporting ADF Market Maker's [an ADF Market Participant's] quotations are no longer reasonably related to the prevailing market, NASD may require the Registered Reporting ADF Market Maker [ADF Market Participant] to

re-enter its quotations. If a Registered Reporting ADF Market Maker [an ADF Market Participant] whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the Registered Reporting ADF Market Maker's [ADF Market Participant's] quotations in one or all securities.

[(1) In the event that an ADF Market Participant's ability to enter or update quotations is impaired, the ADF Market Participant shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.]

[(2) In the event that an ADF Market Participant's ability to enter or update quotations is impaired and the ADF Market Participant elects to continue to participate through NASD's Alternative Display Facility, the ADF Market Participant shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through NASD's Alternative Display Facility.]

[(d) Locked and Crossed Markets]

[(1) A Registered Reporting ADF Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through NASD's Alternative Display Facility during normal business hours if:

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another market maker entering quotations in the same security.]

[(2)](d) Obligations Regarding Locked/Crossed [Market] Quotation

Conditions in the ADF Prior to [Market] Opening

[(A)] (1) Locked/Crossed [Market] ADF Quotations Prior to 9:20 a.m. — For locks/crosses that occur in the ADF prior to 9:20 a.m. Eastern Time, a [Registered Reporting ADF Market Maker] ADF Trading Center that is a party to a lock/cross because the [Registered Reporting ADF Market Maker] ADF Trading Center either has entered a bid (ask) quotation that locks/crosses another [market maker's] ADF Trading Center's quotation(s) or has had its quotation(s) locked/crossed by another [market maker] ADF Trading Center ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send [a message] an order, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving [market maker's] ADF Trading Center's quoted price ("Trade-or-Move Message"). Any [Registered Reporting ADF Market Maker] ADF Trading Center that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within [30] 10 seconds of receiving such message either: fill the incoming [Trade-or-Move Message] order for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the [market] ADF.

[(B)](2) Locked/Crossed [Market] ADF Quotations Between 9:20 and 9:29:59 a.m.

[(i)](A) Before a Registered Reporting ADF ECN enters a quote that would lock or cross the ADF [market] between 9:20 and 9:29:29 a.m. Eastern Time, the ECN must first send, making use of direct electronic access in accordance with Rule 4300, to the market maker or ECN whose quote it would lock or cross a Trade-or-Move Message that is at or superior to the receiving market maker's or ECN's quoted price. An ECN that sends a Trade-or-Move Message during these periods must then wait at least 10 seconds before entering a quote that would lock or cross the [market] ADF.

[(ii)] (B) If a Registered Reporting ADF Market Maker locks or crosses the [market] ADF between 9:20 and 9:29:29 a.m. Eastern Time, the Registered Reporting ADF Market Maker must then immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's or ECNs quoted price.

[(iii)] (C) [Market participants] An ADF Trading Center shall be prohibited from entering a quote that would lock or cross the [market] ADF between 9:29:30 and 9:29:59 a.m.

[(C)](3)[(i)](A) In the case of securities included in the Nasdaq 100 Index or the S&P 400 Index, a Trade-or-Move Message must be for at least 10,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing ADF Trading Center [market maker] must send a message to each party to the lock/cross and the aggregate size

of all such messages must be at least 10,000 shares); provided, however, that if [a market participant] an ADF Trading Center is representing an agency order, the [market participant] ADF Trading Center shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 10,000 shares.

[(ii)] (B) In the case of all other securities, a Trade-or-Move Message must be for at least 5,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if [a market participant] an ADF Trading Center is representing an agency order, the ADF Trading Center [market participant] shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares.

[(D)] (4) An ADF Trading Center [A market maker] that receives a Trade-or-Move Message must, within 10 seconds of receiving such message, either fill the incoming Trade-or-Move Message for the full size of the message, or move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed [market] ADF.

[(E)] (5) An ADF Trading Center [A Registered Reporting ADF Market Maker] that sends a Trade-or-Move Message pursuant to this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.

[(F)] (6) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in [NASD] Rule 3110. An agency order shall not include an order(s) that is for the benefit of an ADF Trading Center [a market maker] in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not an ADF Trading Center [a market maker] in the security at issue.

[(3) Obligations Regarding Locked/Crossed Market Conditions During Market Hours]

[A Registered Reporting ADF Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300A. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Reporting ADF Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through NASD's Alternative Display Facility at the time of receipt of any order.]

[(4) Except as indicated in subsection (2)(B), for purposes of this Rule 4613A(d), the term "Registered Reporting ADF Market Maker" shall include:

(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1-1(a)(8), an order that is displayed through NASD's Alternative Display Facility;

(B) any NASD member that operates the ECN when the priced order being displayed has been entered by a person or entity that is not an NASD member;

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through NASD's Alternative Display Facility; and

(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.]

[(e) Other Quotation Obligations]

[As required by Rule 11Ac1-2(e) under the Exchange Act, a member that uses an ADF terminal or other approved ADF electronic interface shall be obligated to have available in close proximity to the ADF terminal or interface a quotation service that disseminates the bid price and offer price from all markets trading that Nasdaq security.]

[IM-4613A. Autoquote Policy]

[(a) General Prohibition — NASD bans the automated update of quotations by market makers through NASD's Alternative Display Facility. Except as provided below, this policy prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations through NASD's Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation

of NASD's Alternative Display Facility that may be caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.]

[(b) Exceptions to the General Prohibition — Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613A(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to ADF); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order.]

* * * * *

4617A. Normal Business Hours

An ADF Trading Center [Market Participant] shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An ADF Trading Center [Market Participant] may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern [t]Time and 6:30 p.m. Eastern Time. An ADF Trading Center [Market Participant] whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while its [their] quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618A. Clearance and Settlement

(a) A member shall clear and settle transactions effected on the ADF in [Nasdaq] ADF-eligible securities that are eligible for net settlement through the facilities of a

registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in [Nasdaq] ADF-eligible securities may be settled “ex-clearing” provided that both parties to the transaction agree.

4619A. Withdrawal of Quotations [and Passive Market Making]

(a) An [A Registered Reporting] ADF Trading Center [Market Maker] that wishes to withdraw quotations in a security, other than instances when an ADF Trading Center is unable to submit automated quotations to the ADF, shall contact [NASD Alternative Display Facility] ADF Operations to obtain excused withdrawal status prior to withdrawing its quotations. If an ADF Trading Center cannot submit automated quotations, as required by Rule 4300A(e), the ADF Trading Center must immediately withdraw its quotations and promptly contact ADF Operations. An excused withdrawal [Withdrawals] of quotations [shall] may be granted by [NASD Alternative Display Facility] ADF Operations [only] upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the ADF Trading Center's [market maker's] control may be granted for up to five (5) business days, unless extended by [NASD Alternative Display Facility] ADF Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted

for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:

(1) through (2) No Change.

(c) No Change.

(d) Excused withdrawal status may be granted by ADF Operations to an ADF Trading Center [a member] that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the ADF Trading Center [firm] (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).

(e) Excused withdrawal status may be granted by ADF Operations to an ADF Trading Center [a Registered Reporting ADF Market Maker] that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as an ADF Trading Center [a Registered Reporting ADF Market Maker]; provided however, that if NASD finds that the ADF Trading Center's [Registered Reporting ADF Market Maker's] failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620A.

(f) Excused withdrawal status may be granted by ADF Operations to a Registered Reporting ADF Market Maker that is a distribution participant or an affiliated purchaser in order to comply with SEC Rule 101 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to [NASD Alternative Display Facility] ADF Operations and the Market Regulation Department of NASD no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) No Change.

(B) The managing underwriter shall advise each Registered Reporting ADF Market Maker that it has been identified as a distribution participant or an affiliated purchaser to [NASD Alternative Display Facility] ADF Operations and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies [NASD Alternative Display Facility] ADF Operations as required by subparagraph (f)(2), below.

(2) A Registered Reporting ADF Market Maker that has been identified to [NASD Alternative Display Facility] ADF Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify [NASD Alternative Display Facility] ADF Operations and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.

(3) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to [NASD Alternative Display Facility] ADF Operations and the Market Regulation Department of NASD to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report or by other written means.

(g) No Change.

* * * * *

4621A. Suspension and Termination of Quotations by NASD Action

NASD may[, pursuant to the procedures set forth in the Rule 9000 Series,] suspend, condition, limit, prohibit or terminate an ADF Trading Center's [Market Participant's] authority to enter quotations in one or more ADF-eligible securities for violations of applicable requirements or prohibitions.

4622A. Termination of NASD Alternative Display Facility Data System Service

NASD may, upon notice, terminate [NASD Alternative Display Facility] ADF Data System service in the event that an ADF Trading Center [Market Participant] fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD.

4623A. Alternative Trading Systems

(a) NASD may provide a means to permit alternative trading systems ("ATs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule [11Ac1-1(a)(8)] 600(b)(23), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule [11Ac1-1(c)(5)(ii)(A) and (B)] 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"). NASD will not facilitate compliance with access requirements, which are the responsibility of ADF Trading Centers [Market Participants] under Rule 4300A.

(b) An ATS or ECN that seeks to use NASD-provided means to comply with SEC Rule 301(b)(3) and/or the ECN display alternatives, or provide orders to the ADF voluntarily shall:

(1) through (2) No Change.

[(3)] [enter into and comply with the terms of an NASD Alternative Display Facility Workstation Subscriber Agreement, as amended for ATs and ECNs;]

[(4)] (3) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in [NASD's Alternative Display Facility] the ADF), at the highest buy price and the lowest sell price for each [Nasdaq] ADF-eligible security entered in and [widely] disseminated by the ATS or ECN; and prior to

entering such prices and sizes, register with [NASD Alternative Display Facility] ADF Operations as a Registered Reporting ADF ECN; and

[(5)] (4) No Change.

(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS' or ECN's ADF-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) through (2) No Change.

No Registered Reporting ADF ECN operating through NASD's [Alternative Display Facility] ADF pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through [NASD's Alternative Display Facility] the ADF is 100 shares or greater. For purposes of this Rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

* * * * *

4630A. Reporting Transactions in ADF-Eligible Securities

This Rule 4630A Series governs the reporting by members of transactions in ADF-eligible securities through NASD's Trade Reporting and Comparison Service ("TRACS"). Transactions executed otherwise than on an exchange must be reported to ADF TRACS, in accordance with Rule 4632A or other pertinent NASD Rule, unless they are reported to another reporting facility designated by the Securities and Exchange

Commission as being authorized to accept trade reports for trades executed otherwise than on an exchange. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.

* * * * *

4632A. Transactions Reported by Members

(a) When and How Transactions are Reported to TRACS

(1) Transaction Reporting to TRACS During Normal Market Hours

[ADF Market Participants and Non-ADF Market Participants] Members shall, within 90 seconds after execution, transmit to TRACS, or if TRACS is unavailable due to system or transmission failure, by telephone [to the Operations Department], facsimile or e-mail to ADF Operations, last sale reports of transactions in ADF-eligible securities executed [during normal market hours] between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on an exchange. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances shall be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

(2) Transaction Reporting to TRACS Outside Normal Market Hours

(A) Last sale reports of transactions in ADF-eligible securities executed otherwise than on an exchange between 8:00 a.m. and 9:30 a.m.

Eastern Time shall be reported within 90 seconds after execution and shall be designated as “.T” trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in ADF-eligible securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as “.T” trades to denote their execution outside normal market hours.

(B) Last sale reports of transactions in ADF-eligible securities executed otherwise than on an exchange outside the hours of 8:00 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions executed otherwise than on an exchange between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 p.m. Eastern Time on trade date and be designated as “.T” trades to denote their execution outside normal market hours.

(ii) Last sale reports of transactions executed otherwise than on an exchange between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time, be designated “as/of” trades to denote their execution on a prior day and be designated as .T transactions to denote their execution outside of normal market hours.

[(3) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in ADF-

eligible securities for which electronic submission to TRACS is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to TRACS, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.]

[(4) All members shall append the .W trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae.]

[(5) All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.]

[(6) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.]

[(7) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.]

[(8) Members shall append the .W trade report modifier to reports of Stop Stock Transactions (as defined in Rule 4200A) and include the time at which the member and the other party agreed to the Stop Stock Price (as defined in Rule 4200A) in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.]

[(9) To identify pre-opening and after-hours trades reported late, members must append the .ST report modifier for any report submitted more than 90 seconds after execution.]

[(10) All modifiers described herein also must be included in "as/of" trades.]

(3) All Trade Tickets Must be Time-Stamped

Members shall time-stamp all trade tickets at the time of execution for transactions in ADF-eligible securities. Execution time shall be reported to NASD on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included on the report.

(4) Other Modifiers Required to be Reported to TRACS

Reporting Members also shall append the following trade report modifiers as specified by NASD to a last sale report, including "as/of" trades, if applicable:

(A) .SLD, if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) .SNN, if the trade is a Seller's Option Trade, .NN denotes the number of days for delivery;

(C) .C, if the trade is a Cash Trade;

(D) .ND, if the trade is a Next Day Trade;

(E) .W, if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) .1, if the trade is a Stop Stock Transaction (as defined in Rule 4200A) (note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the .1 modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) .PRP, if the transaction reports reflects a price different from the current market when the execution price is based on a prior reference point in time (note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time or when the transaction is a single-priced opening, re-opening or closing transaction);

(H) .4, if the transaction was based upon a single-priced opening, re-opening, or closing transaction by a trading center;

(I) .ST, to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern Time or between 4:00 p.m. and 6:30 p.m. Eastern Time) reported more than 90 seconds after execution;

(J) .X, if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception from SEC Rule 611.

(K) If the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception from SEC Rule 611, members must, in addition to the .X, append an appropriate unique modifier, specified by NASD, that identifies the specific applicable exception from SEC Rule 611 that a member is relying upon.

(L) Any other modifier as specified by NASD or the Securities and Exchange Commission.

(5) Form T Reporting Obligations

Members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in ADF-eligible securities for which electronic submission to TRACS is not possible (e.g., the ticker symbol for the security is no longer available or an ADF Trading Center identifier is no longer active). Transactions that can be reported to TRACS, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.

(b) Which Party Reports Transaction

(1) In transactions between two Registered Reporting [ADF Market Makers] Members, the member representing the sell side shall report the trade using TRACS.

(2) In transactions between a Registered Reporting [ADF Market Maker] Member and a [member that is not a] Non-Registered Reporting [ADF Market Maker] Member, the Registered Reporting [ADF Market Maker] Member shall report the trade using TRACS.

(3) In transactions between two [members that are not Registered Reporting ADF Market Makers] Non-Registered Reporting Members, the member representing the sell side shall report the trade to TRACS.

(4) In transactions between a member and a customer or non-member, the member shall report the trade using TRACS.

(c) Information To Be Reported – Two Party Trade Reports

(1) No Change.

(2) Each two party last sale report submitted by a reporting NASD member should contain:

(A) through (H) No Change.

(I) Execution time expressed in hours, minutes and seconds based on Eastern Time[,] in military format, unless another provision of NASD rules requires that a different time be included on the report;

(J) through (T) No Change.

(3) No Change.

(d) through (e) No Change.

[(f) Aggregation of Transaction Reports]

[(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.]

[(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.]

[Example:]

[A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.]

[REPORT 10,000 shares at 40.]

[(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.]

[Example:]

[A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.]

[REPORT 10,000 shares at 40.]

[(C) Orders relayed to the trading department of the reporting member for simultaneous execution at the same price.]

[Example:]

[A firm purchases a block of 50,000 shares from an institution at a reported price of 40.]

[REPORT 50,000 at 40.]

[Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.]

[REPORT 12,500 at 40.]

[Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.]

[REPORT 15,000 at 40.]

[Example:]

[Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.]

[REPORT 10,000 at 40.]

[(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.]

[Examples:]

[A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.]

[First Example]

[11:01:00 500 shares at 40]

[11:01:05 500 shares at 40]

[11:01:10 9,000 shares at 40]

[11:01:15 500 shares at 40]

[REPORT 10,500 shares at 40 within ninety seconds of 11:01.]

[Second Example]

[11:01:00 100 shares at 40]

[11:01:10 11,000 shares at 40]

[11:01:30 300 shares at 40]

[REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).]

[Third Example]

[11:01:00 100 shares at 40]

[11:01:15 500 shares at 40]

[11:01:30 200 shares at 40]

[11:02:30 400 shares at 40]

[REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).]

[(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by NASD.]

(f) Prohibition on Aggregation of Transactions

Individual executions of orders in a security at the same price may not be aggregated, for transaction reporting purposes, into a single transaction report.

[(g) Reporting Transactions on Form T]

[All Reporting NASD Members required (or that elect) to report transactions to NASD's Alternative Display Facility shall report, as soon as practicable to NASD's

Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to NASD's Alternative Display Facility is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or NASD will not accept the date of execution because NASD's Alternative Display Facility was closed on that date). Transactions that can be reported to NASD, whether on trade date or on a subsequent date on an "as of" basis (T§N), shall not be reported on Form T.]

[(h) Trade Tickets]

[All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.]

[(i)] (g) No Change.

[(j)] (h) No Change.

[(k)] (i) Transactions Not To Be Reported To NASD For Publication

Purposes

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) through (4) No Change.

(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market; [and]

(6) transactions reported on or through an exchange;[.]

(7) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and

(8) purchase of securities off the floor of an exchange pursuant to a tender offer.

[(1)] (j) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

Members shall report [to the NASD Alternative Display Facility Operations] the cancellation of any trade through TRACS that was previously submitted to NASD through TRACS. The member responsible under the 4600A series for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in 4600A Series.

(2) Deadlines for Reporting Cancelled Trades

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time [and cancelled before 5:13:30 p.m. on the date of execution], the member responsible under paragraph [(m)] (j)(1) shall use its best efforts to report the cancellation not later than 6:30 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.

(B) For trades executed [between] outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time [and cancelled after 5:13:30 p.m., but before 5:15 p.m. on the date of execution], the member responsible under paragraph [(m)] (j)(1) shall use its best efforts to report the cancellation

not later than [5:15] 6:30 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.

[(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:15 p.m. on the date of execution, the member responsible under paragraph (m)(1) shall report the cancellation on the following business day by 6:30 p.m.]

[(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (m)(1) shall report the cancellation by 6:30 p.m.]

[(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 6:30 p.m. on the date of execution, the member responsible under paragraph (m)(1) shall report the cancellation on the following business day by 6:30 p.m.]

[(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (m)(1) shall report the cancellation (i) by 6:30 p.m. on the date of cancellation if the trade is cancelled before 6:30 p.m., or (ii) by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.]

[(G) For purposes of determining the deadline by which a trade cancellation must be reported to NASD pursuant to subparagraph (m) of this rule the term "cancelled" shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by

its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.]

(C) For purposes of determining the deadline by which a trade cancellation must be reported to NASD pursuant to subparagraph (j) of this rule the term “cancelled” or “cancellation” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

* * * * *

5000. Other Nasdaq and NASD Markets

[5200. Intermarket Trading System/Computer Assisted Execution System]

[5210. Definitions]

[(a) The term "ITS Participant Exchange" shall mean a participant in the ITS Plan that is a national securities exchange.]

[(b) The term "ITS Plan" shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by

the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule 11Aa3-2 thereunder.]

[(c) The term "ITS Security" shall mean any security which may be traded through the System by an ITS/CAES Market Maker.]

[(d) The term "ITS System" shall mean the communications network and related equipment that links electronically the ITS Participant Exchanges and ITS/CAES Market Makers as described in the Plan.]

[(e) The term "ITS/CAES Market Maker" shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS through CAES with respect to one or more specified ITS securities in which he is then actively registered. The term "ITS/CAES Market Maker" shall also include a member of the Association that meets the definition of electronic communications network ("ECN"), as defined in SEC Rule 11Ac-1-1(a)(8), or alternative trading system ("ATS"), subject to SEC Regulation ATS Rule 301(b), and has voluntarily chosen to register with Nasdaq and meets the terms of registration set forth in the Nasdaq-provided agreement linking ECNs and ATSSs to the CAES system. Registration as an ITS/CAES Market Maker is mandatory for all registered CQS market makers in securities eligible for inclusion in the ITS/CAES linkage.]

[(f) The term "Participant Market" shall mean the securities trading floor of each participating ITS Exchange and the markets of ITS/CAES Market Makers in ITS securities.]

[(g) The term "Pre-Opening Application" shall mean the application of the System which permits a specialist or ITS/CAES Market Maker who wishes to open his

market in an ITS Security to obtain pre-opening interests from other specialists and ITS/CAES Market Makers.]

[(h) The term "Previous Day's Consolidated Closing Price" shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions were reported by such system; provided, however, that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (Amex), if, because of unusual market conditions, the NYSE or the Amex price is designated as such pursuant to the ITS plan.]

[(i) A "Third Participating Market Center Trade-Through," as that term is used in this Rule, occurs whenever an ITS/CAES Market Maker initiates the purchase of an ITS Security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed by ITS/CAES Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."]

[(j) "CAES" means the "Computer Assisted Execution System", the computerized order routing and execution facility for ITS Securities, as from time to time modified or

supplemented, that is operated by The Nasdaq Stock Market, Inc. and made available to NASD members. CAES functionality is offered through the Nasdaq Market Center pursuant to the Rule 4700 Series.]

[5220. ITS/CAES Registration]

[In order to participate in ITS, a market maker or ECN/ATS must be registered with the Association as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:]

[(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;]

[(b) execution of an ITS/CAES Market Maker application agreement with the Association at least two days prior to the requested date of registration;]

[(c) compliance with SEC Rule 15c3-1;]

[(d) compliance with the ITS Plan, SEC Rule 11Ac1-1 and all applicable Rules of the Association;]

[(e) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association;]

[(f) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and]

[(g) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such

identified ITS System trade by the clearing member on the regularly scheduled settlement date.]

[(h) election to participate in ITS/CAES through either automatic execution or order delivery. As a part of its contractual obligation required under subsection (i) below, Market Makers choosing order delivery status are required to satisfactorily demonstrate to Nasdaq the technical capacity to properly and timely respond to orders delivered through CAES.]

[(i) election to participate in the Nasdaq Market Center through either automatic execution or order delivery. As a part of its contractual obligation required under subsection (j) below, Market Makers choosing order delivery status are required to satisfactorily demonstrate to Nasdaq the technical capacity to properly and timely respond to orders delivered through CAES.]

[(j) with respect to order delivery ITS/CAES Market Makers, execution of an addendum to the ITS/CAES Market Maker application agreement at least two business days prior to the requested date of operation.]

[5221. Suspension or Revocation of ITS/CAES Registration]

[Failure by an ITS/CAES Market Maker to comply with the ITS Plan or any of the rules identified herein shall subject such ITS/CAES Market Maker to censure, fine, suspension or revocation of its registration as an ITS/CAES Market Maker, or any other fitting penalty.]

[5230. ITS Operations]

[(a) All transactions effected through ITS shall be on a "regular way" basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency

registered with the Commission which maintains facilities through which ITS transactions may be compared and settled.]

[(b) Any "commitment to trade," which is transmitted by an ITS/CAES Market Maker to another ITS participating market center through ITS, shall be firm and irrevocable for the period of either one or two minutes (specified in accordance with subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:]

[(1) include the number or symbol which identifies the ITS/CAES Market Maker;]

[(2) direct the commitment to a particular participant market;]

[(3) specify the security which is the subject of the commitment;]

[(4) designate the commitment as either a commitment to buy or a commitment to sell;]

[(5) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof;]

[(6) specify:]

[(A) a price equal to the offer or bid price then being furnished by the destination Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively;]

[(B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or]

[(C) that the commitment is a commitment to trade "at the market;"]

[(7) specify either one minute or two minutes as the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, a two minute period shall be assumed. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/CAES Market Makers;]

[(8) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a-1(a) under the Act would apply.]

[(c) If a commitment to trade is directed to an ITS/CAES Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/CAES Market Maker, then such ITS/CAES Market Maker shall be placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into the Association's Consolidated Quotation Service. The new two-sided quotation required of the ITS/CAES Market Maker will be entered as promptly as possible into the Association's Consolidated Quotation Service.]

[(d) Transactions in ITS securities executed in CAES by ITS/CAES Market Makers or received through the ITS System and executed by an ITS/CAES Market Maker are reported to the CTA Plan Processor by the CAES System at the price specified in the commitment or if executed at a better price, the execution price.]

[5240. Pre-Opening Application — Opening by ITS/CAES Market Maker]

[The pre-opening application enables an ITS/CAES Market Maker or ITS Participant Exchange in any participant market who wishes to open his market in an ITS Security to obtain through the ITS System or CAES, any pre-opening interest of an ITS Participant Exchange or other ITS/CAES Market Makers registered in that security and/or market makers in other participant markets.]

[(a) Notification Requirement — Applicable Price Change, Initial Notification]

[(1) Whenever an ITS/CAES Market Maker, in an opening transaction in any ITS/ CAES Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), he shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the ITS/CAES Market Maker shall not open the security in his market until not less than three minutes after his transmission of the pre-opening notification. The "applicable price changes" are:]

[Security]	[Consolidated Closing Price]	[Applicable Price Change (More Than)]
[Network A]	[Under \$15]	[1/8 point]
	[\$15 or over]	[1/4 point ¹]
[Network B]	[\$5 or over]	[1/8 point]
	[Under \$5]	[1/4 point ²]

[¹ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one point.]

[² If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two points.]

[For transactions involving securities trading in decimal-based increments, the "applicable price changes" are:]

[Security]	[Consolidated Closing Price]	[Applicable Price Change (More Than)]
[Network A]	[Under \$15]	[\$0.10]
	[\$15 or over]	[\$0.25 ³]
[Network B]	[Under \$5]	[\$0.10]
	[\$5 or over]	[\$0.25 ⁴]

[³ If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.]

[⁴ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.]

[(2) A pre-opening notification shall:]

[(A) be designated as a pre-opening notification (POA);]

[(B) identify the ITS/CAES Market Maker and the security involved; and]

[(C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:]

[POA MMID/XYZ]

[(3) The price range shall not exceed the "applicable price range" shown below:]

[Security]	[Consolidated Closing Price]	[Applicable Price Range]
[Network A]	[Under \$50]	[1/2 point]
	[\$50 or over]	[1 point ⁵]
[Network B]	[Under \$10]	[1/2 point]
	[\$10 or over]	[1 point ⁶]

[⁵ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[⁶ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:]

[Security]	[Consolidated Closing Price]	[Applicable Price Range]
[Network A]	[Under \$50]	[\$0.50]
	[\$50 or over]	[\$1.00 ⁷]
[Network B]	[Under \$10]	[\$0.50]
	[\$10 or over]	[\$1.00 ⁸]

[⁷ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[⁸ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 1/8–5/8 price range

would be permissible if the previous day's consolidated closing price were 1/8 or 5/8, but not if the closing price were 1/4, 3/8 or 1/8).]

[For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15–40.65 price range would be permissible if the previous day's consolidated closing price were 40.15–40.65, but not if the closing price were within the price range 40.16–40.64).]

[(b) Subsequent Notifications]

[If, after sending a pre-opening notification, the situation in an ITS/CAES Market Maker's market changes he may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the ITS/CAES Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires whichever is longer, before opening his market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/CAES Market Maker must wait for the rest of the period to pass before opening his market).]

[(1) Increase or Decrease in Applicable Price Range]

[Where, prior to the ITS/CAES Market Maker's opening of his market in the security, his anticipated opening price shifts so that it (A) is outside of the price range specified in his pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the

applicable price change, he shall issue a replacement pre-opening notification (an "additional" notification) through the system before opening his market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.]

[(2) Shift to within Applicable Price Change Parameter]

[(A) The ITS/CAES Market Maker shall, by issuing a "cancellation" notification through the system, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he anticipates opening his market shifts so that it (i) is outside of the price range specified in his pre-opening notification but (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.]

[(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.]

[Example:]

[CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30–30 1/2; 30 1/8–30 5/8; or 30 1/4–30 3/4. It is then determined that the stock will open at 29 3/4 or 29 7/8. Under

paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/8, or 30 1/4, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).]

[Example for Decimal-Based Securities:]

[CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60 It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).]

[(3) Participation as Principal Precluded ("Second Look")]

[If a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., his responding principal interest is to sell at a price 1/8 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (i.e., in the parenthetical example above, the total amount of the security that he would have to sell at the 1/8-better price to permit the opening transaction to occur at that price).]

[For securities trading in decimal-based increments, if a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. his responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the .01 price and size at which he could participate as principal (i.e., the parenthetical example above, the total amount of the security that he would have to sell at the .01 better price to permit the opening transaction to occur at that price).]

[(c) Tape Indications]

[If the CTA Plan or the Association's rules requires or permits that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/CAES Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/CAES Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation, the ITS/CAES

Market Maker shall not open or reopen the security until not less than three minutes after his transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting system.]

[(d) Pre-Opening Responses — Decision on Opening Transaction]

[Subject to paragraph (e), If an ITS/CAES Market Maker who has issued a pre-opening notification receives "pre-opening responses" through the system containing "obligations to trade" from market makers in other Participant markets ("responding market makers"), he shall combine those obligations with orders he already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/CAES Market Maker has received more than one pre-opening response from a Participant market, he shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding response(s). An original or revised response received after the ITS/CAES Market Maker has effected his opening transaction shall be to no effect.]

[(e) Pre-Opening Responses from Open Markets]

[(1) An ITS/CAES Market Maker must accept only those pre-opening responses sent to the Association by market makers in other participant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading declared by the Association in an ITS Security, an ITS/CAES Market Maker must accept only those pre-opening responses sent by market makers to the Association from other participant markets that halted

trading in the security contemporaneously with the Association and that had not resumed trading in the security at the time the pre-opening response was sent.]

[(2) In the event that one or more market makers from participant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with the Association, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/CAES Market Maker need not, but may in his discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant market sending a pre-opening response but prior to the opening or reopening transaction in ITS/CAES, the market maker who sent the pre-opening response to the Association must confirm the pre-opening response by sending an administrative message through the system stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/CAES Market Maker need not, but may in his discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.]

[(f) Allocation of Imbalances]

[Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/CAES Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the

allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/CAES Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/ CAES Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in his pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant market shall be deemed to be a single responding market maker.]

[(g) Treatment of Obligations to Trade]

[In receiving a pre-opening response, an ITS/CAES Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as he would to an order entrusted to him as agent at the same time such obligation was received.]

[(h) Responses Increasing the Imbalances]

An ITS/CAES Market Maker shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

[(i) Reports of Participation]

[Promptly following the opening in any security as to which an ITS/CAES Market Maker issued a pre-opening notification, the ITS/CAES Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the

opening price that did not participate in the opening transaction, the fact that such interest did not so participate.]

[5250. Pre-Opening Application — Openings on Other Participant Markets]

[(a) Pre-Opening Responses]

[Whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40 3/8), reflected on a netted share basis.]

[For securities trading in decimal-based increments, whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the

ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40), reflected on a netted share basis.]

[The pre-opening response shall be formatted as follows:]

[POR (MMID) BUY (SELL) A-P 40 3/8]

[For securities trading in decimal-based increments the pre-opening response shall be:]

[POR (MMID) BUY (SELL) A-P 40.40]

[The response may also show market orders separately.]

[(b) Revised Responses]

[An ITS/CAES Market Maker may cancel or modify his pre-opening response by sending through the System a revised response that cancels the obligations to trade contained in his original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/CAES Market Maker's aggregate interest (i.e., his interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.]

[(c) Pre-Opening Notification from Other Markets]

[No ITS/CAES Market Maker whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other participant market, prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1-1. No ITS/CAES Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant Market, did not halt trading in the security reasonably contemporaneously with the Participant Market or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.]

[(d) Sole Means of Pre-Opening Routing]

[Once a pre-opening notification as to any security is received by the ITS/CAES Market Maker through the System, the ITS/CAES Market Makers in such security shall submit obligations to trade that security as principal for his own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/CAES Market Maker prior to the issuance of the pre-opening notification.]

[(e) Duration of Obligations to Trade]

[Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/CAES Market Maker includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on him, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.]

[(f) Request for Participation Report]

[The ITS Plan anticipates that an ITS/CAES Market Maker who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. Eastern Time, and he does not receive a response by 9:30 a.m. Eastern Time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve him of the obligation, when he does not receive a report, to request a report as soon as he reasonably should expect to have received it.]

[5260. System Trade and Quotations]

[5261. Obligation to Honor System Trades]

[If an ITS/CAES Market Maker or clearing member acting on his behalf is reported on the clearing tape (as adjusted) at the close of any trading day, or shown by the

activity reports developed by CAES as constituting a side of a System trade, such
ITS/CAES Market Maker or clearing member shall honor such trade on the scheduled
settlement date.]

[5262. Trade-Throughs]

[(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES
security, shall avoid purchasing or selling such security, whether as principal or agent, at
a price which is lower than the bid or higher than the offer displayed from an ITS
Participant Exchange or ITS/CAES Market Maker ("trade-through"), unless the following
conditions apply:]

[(1) the size of the bid or offer that is traded-through is for 100 shares;]

[(2) the ITS/CAES Market Maker is unable to avoid the trade-through
because of the systems/equipment failure or malfunction;]

[(3) the transaction which constituted the trade-through is not a "regular
way" contract;]

[(4) the bid or offer that is traded-through is being displayed from a
Market Center whose members are relieved of their obligations under SEC Rule
11Ac1-1(C)(2) with respect to such bid or offer;]

[(5) the bid or offer that is traded-through has caused a locked or crossed
market in the ITS Security;]

[(6) the commitment received by an ITS/CAES Market Maker which
caused the trade-through was originated by an ITS Participant Exchange;]

[(7) the transaction involves (A) purchases and sales effected by ITS/CAES Market Makers participating in an opening (or reopening) transaction or (B) any "Block Transaction" as defined in the ITS/CAES Rules; or

[(8) in the case of a third participating market center trade-through, either:]

[(A) the ITS/CAES Market Maker who initiated the trade-through

(i) had sent a commitment to trade promptly following the trade-through

that satisfies the bid or offer traded-through, and (ii) preceded the

commitment with an administrative message stating that the commitment

was in satisfaction of a third participating market center trade-through; or]

[(B) a complaint with respect to the trade-through was not received

by the Association through the System from the aggrieved party promptly

following the trade-through, and, in any event, within ten (10) minutes

from the time the aggrieved party sent a complaint through the System to

the ITS participating market center that received the commitment to trade

that caused the trade-through, which first complaint must have been

received within five (5) minutes from the time the report of the transaction

that constituted the trade-through was disseminated over the high speed

line of the consolidated last sale reporting system.]

[(9) The transaction involves QQQs, DIAMONDS, and SPDRs, and the execution occurs at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This exemption shall apply for a pilot period ending June 4, 2003, or for such other period specified by the SEC.]

[(b) (1) If a trade-through occurs and a complaint is promptly received by the Association either through the ITS System from the appropriate ITS Participant Exchange whose member is the aggrieved party or from an ITS/CAES Market Maker, then:]

[(A) If ITS/CAES Market Makers are on both sides of a principal trade, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise (i) the initiating ITS/CAES Market Maker shall satisfy, or cause to be satisfied, the bid or offer traded through in its entirety at the price of such bid or offer or at the price that caused the trade-through (as determined in accordance with subparagraph (E) below, or, if the initiating ITS/CAES Market Maker elects not to do so, (ii) the transaction shall be voided.]

[(B) If an ITS/CAES Market Maker executed the transaction and the contra-side was not an ITS/CAES Market Maker (i) the ITS/CAES Market Maker registered in the security shall satisfy, or cause to be satisfied, the bid or offer traded-through in its entirety at the price of such bid or offer, or, if the ITS/CAES Market Maker elects not to do so, (ii) the price of the transaction which constituted the trade-through shall be corrected by the ITS/CAES Market Maker to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.]

[(C) If ITS/CAES Market Makers are on both sides of a trade and one or both are acting as agent, the price of the transaction which constituted the trade-through shall be corrected, by agreement of the parties, to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system; otherwise, the ITS/CAES Market Maker that initiated the transaction shall satisfy, or cause to be satisfied the bid or offer traded through in its entirety at the price of such bid or offer.]

[(D) Whenever the provisions of subparagraphs (B) and (C) above apply, the customer's order or a portion thereof which was executed in the transaction which constituted the trade-through (whether such order or a portion thereof was executed by the member who initiated the trade-through or by the member on the contraside of the transaction, or both) shall receive the price which caused the trade-through, or the price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (B) above, or the adjusted price, if there was an adjustment pursuant to subparagraph (B) above, whichever price is most beneficial to the order or a portion thereof. Money differences resulting from the application of this paragraph shall be the liability of the member who initiated the trade-through.]

[(E) The price at which the bid or offer traded through shall be satisfied shall be the price of such bid or offer except if (i) the transaction that constituted the trade-through was of "block size" but did not

constitute a "block trade" (as those terms are defined in the Block Trade Rule) and (ii) the ITS/CAES Market Maker who initiated the trade-through did not make every reasonable effort to satisfy, or cause to be satisfied, through the System the bid or offer traded through at its price and in its entirety within two (2) minutes from the time the report of the transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale reporting system. In the case of such exception, the price at which the bid or offer traded through shall be satisfied shall be the price that caused the trade-through.]

[(2) Such complaint shall be considered promptly received when no more than five minutes expire from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system, unless the transaction is between an ITS/CAES Market Maker and another ITS/CAES Market Maker or ITS Participant Exchange. In the later case, the complaint must be received within ten minutes from the time the aggrieved party sent a complaint through the System to the ITS/CAES Market Maker or ITS Participant Exchange that received the commitment to trade that caused the trade-through, which first complaint must have been received within five minutes from the time the report of the transaction was disseminated over the high speed line of the consolidated last sale reporting system.]

[(c) (1) The Association shall notify the ITS/CAES Market Maker of any trade-through complaint received from an ITS Participant Exchange or ITS/CAES Market Maker. Upon receipt of such notification, the ITS/CAES Market Maker

shall promptly respond to the complaining ITS Participant Exchange or ITS/CAES Market Maker. Such response shall set forth either: (A) the conditions specified in paragraph (a) above, or (B) the corrective action to be taken under paragraph (b) above. If there is more than one ITS/CAES Market Maker that is registered in the ITS Security and participating in the transaction, then the ITS/CAES Market Maker that initiated the transaction will receive notification of the trade-through complaint.]

[(2) If it is ultimately determined that an ITS/CAES Market Maker has engaged in a trade-through but has not taken corrective action required by paragraph (b) above then the ITS/CAES Market Maker shall be liable for the lesser of (A) the actual loss proximately caused by the trade-through and suffered by the aggrieved party, or (B) the loss proximately caused by the trade-through which would have been suffered by the aggrieved party had he purchased or sold the security subject to the trade-through in order to mitigate his loss and had such purchase or sale been effected at the "loss basis price." For purposes of this subparagraph the "loss basis price" shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system in the security in question, after one hour has elapsed from the time the complaint is received (or, if the complaint is so received within the last hour in which transactions are reported on the high speed line of the consolidated last sale reporting system on any day, then the price of the opening transaction in such security reported on such high speed line on the next day on which the security is traded]

[(3) Any ITS/CAES Market Maker that becomes the subject of a trade-through by another ITS Participant Exchange or ITS/CAES Market Maker may take whatever steps are necessary to mitigate any potential loss resulting from the trade-through of his bid or offer. Such action shall be promptly communicated to the offending ITS Participant market.]

[(4) The provisions of this trade-through rule shall not apply in respect to any Participant Exchange which does not have in effect a similar rule imposing similar obligations and responsibilities.]

[(5) If a complaint of a purported trade-through is received by the Association and the complained-of transaction resulted from an ITS/CAES Market Maker's execution of a commitment to trade received from another ITS/CAES Market Maker or ITS Participant Exchange, the ITS/CAES Market Maker should, if circumstances permit, make reasonable efforts to notify the complaining party, as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated by the ITS/CAES Market Maker and (B) of the identity of the ITS/CAES Market Maker or ITS Participant Exchange that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ITS/CAES Market Maker for any loss associated with the complained-of transaction.]

[IM 5262-1. Contemporaneous Sending Of Commitments]

[The terms "trade-through" and "third participating market center trade-through" do not include the situation where a member who initiates the purchase (sale) of an ITS Security, at a price which is higher (lower) than the price at which the security is being

offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.]

[5263. Locked or Crossed Markets]

[(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security that makes a bid (offer) for such security at a price which equals the offering (bid) price at that time from an ITS Participant Exchange or ITS/CAES Market Maker has created what is referred to in this rule as a "locked market."]

[(b) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security that makes a bid (offer) for such security at a price which exceeds (is less than) the offering (bid) price at that time from an ITS Participant Exchange or ITS/CAES Market Maker has created what is referred to in this rule as a "crossed market."]

[(c) (1) Unless excused by operation of paragraphs (c)(2) or (d) below an ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with an ITS Participant Exchange or another ITS/CAES Market Maker and that receives a complaint through ITS/CAES or CAES from the party whose bid (offer) was locked or crossed (the "aggrieved party"), the ITS/CAES Market Maker responsible for the locking or crossing offer (bid) shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through ITS/CAES or CAES the locked or crossed bid (offer) up to the size of his locking

or crossing offer (bid)) or "unlock" (i.e., adjust his locking or crossing offer (bid) so as not to cause a locked or crossed market). If the complaint specifies "unlock", it may nevertheless ship instead.]

[(2) If there is an error in a locking or crossing bid or offer that relieves the locking or crossing ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the ITS/CAES Market Maker receives a "ship" complaint through ITS/CAES or CAES from the aggrieved party, the locking or crossing ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES or CAES of the error within two minutes of receipt of the complaint. If the locking or crossing ITS/CAES Market Maker fails to so notify the aggrieved party, he shall promptly ship.]

[(d) The provisions of paragraph (c) above shall not apply when:]

[(1) the bid or offer in the ITS Participating market center is for 100 shares;]

[(2) the issuance of the commitment to trade or order referred to above would be prohibited by an NASD rule or by SEC Rule 10a-1 under the Act;]

[(3) the ITS/CAES Market Maker who causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a systems/equipment failure or malfunction;]

[(4) the bid or offer that causes the locked or crossed market is not for a "regular way" contract;]

[(5) the locked or crossed market occurs at a time when, with respect to the ITS Security which is the subject of the locked or crossed market, members of the ITS participating market center to which the commitment to trade would be sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1-1(c)(2);]

[(6) the transaction involves (A) purchases and sales effected by ITS/CAES Market Maker's participating in an opening or (reopening) transaction or (B) any "Block Transaction" as defined in the ITS/CAES Rules.]

[(7) the locking or crossing bid or offer no longer prevails at the time the complaint is received by the ITS/CAES Market Maker.]

[5264. Block Transactions]

[(a) An ITS/CAES Market Maker who executes a "block transaction" in an ITS/CAES security in which he is registered as an ITS/CAES Market Maker at an execution price outside the best quotation for the security displayed by any ITS participant market or other ITS/CAES Market Maker, shall, upon executing the block trade, send to each other participant market and each ITS/CAES Market Maker displaying a bid or offer (as the case may be) superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that participant market's bid or offer.]

[(b) For purposes of this Rule, a block transaction shall be a trade that:]

[(1) involves 10,000 or more shares of a common stock traded through ITS (an "ITS Security") or a quantity of any such security having a market value of \$200,000 or more ("block size");]

[(2) is effected at a price outside the bid or offer displayed from another ITS participating market center; and]

[(3) involves either:]

[(A) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side); or]

(B) any other transaction of block size (i.e., in which the ITS/CAES Market Maker represent[ts an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer of the ITS/CAES Market Maker.]

[Contemporaneous transactions at the same price filling an order or orders then or theretofore represented by the ITS/CAES Market Maker (including transactions resulting from commitments to trade sent by the ITS/CAES Market Maker pursuant to paragraph (a) above) shall be deemed to constitute a single transaction for the purpose of this definition.]

[(c) A "current bid or offer" of the ITS/CAES Market Maker, as that term is used in paragraph (b)(3)(B) above, means the price of the current quotation displayed by the ITS/CAES Market Maker established independently of the order to buy or sell.]

[(d) A "bid or offer" displayed from another ITS participating market center (or any derivative phrase), as that term is used in this Rule, means the current quotations from another ITS participating market center displayed to the ITS/CAES Market Maker as required by the ITS Plan, and does not include "away-from-the-market" limit orders or other interests that may be represented in such other ITS participating market center.]

[(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:]

[(1) the size of the better priced bid or offer displayed by another ITS participating market center was for 100 shares;]

[(2) the ITS/CAES Market Maker representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS participating market center but was unable to because of a systems/equipment failure or malfunction;]

[(3) the block trade was not a "regular way" contract;]

[(4) the bid or offer that is traded through is being displayed from a Market Center whose members are relieved of their obligations under SEC Rule 11Ac1-1(c)(2) with respect to such bid or offer;]

[(5) the bid or offer that is traded through has caused a locked or crossed market in the ITS Security;]

[(6) the better priced bid or offer was being displayed from an ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under SEC Rule 11Ac 1-1(c)(2) pursuant to the "unusual market" exception to SEC Rule 11Ac1-1(b)(3); or]

[(7) the better priced bid or offer had caused a "locked or crossed market," in the ITS Security that was the subject of the block trade.]

[5265. Authority to Cancel or Adjust Transactions]

[(a) In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association

may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code and the Rule 9700 Series, declare any transaction arising out of the use or operation of the ITS/CAES System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and the Association may reallocate stock between ITS/CAES Market Makers to correct an erroneous transaction.]

[(b) For purposes of this Rule, the terms of the transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong ITS/CAES Market Maker.]

[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 a six-month pilot period ending November 30, 2006, 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 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.]

* * * * *

[6300. Consolidated Quotations Service (CQS)]

[6310. [Reserved]]

[6320. Registration as a CQS Market Maker]

[(a) Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker.]

[(b) An Association member, including an operator of an ECN/ATS as defined in Rule 5210(e), seeking registration as a CQS market maker shall file an application with the Association. The application shall certify the member's good standing with the Association and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a CQS market maker shall become effective upon receipt by the member of notice of approval of registration by the Association.]

[(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request via a Nasdaq terminal. Registration shall become effective at the time the registration request is entered.]

[(d) An Association member that becomes registered as a CQS market maker in an issue shall enter quotations in the issue on the effective date of the issue's authorization. If quotations are not entered on the effective date of authorization and the CQS market maker remains inactive in the issue for five (5) business days, the CQS market maker's registration in the issue will be terminated.]

[(e) All CQS market makers registered in reported securities shall be registered as market makers in the Computer Assisted Execution System (CAES); all CQS market makers registered in reported securities that are eligible for inclusion in the Intermarket

Trading System/Computer Assisted Execution System (ITS/CAES) shall be registered as market makers in ITS/CAES and shall be subject to the Rule 5200 Series.]

[6330. Obligations of CQS Market Makers]

[(a) Pursuant to SEC Rule 11Ac1-1, a CQS market maker's quotations in reported securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a reported security in both a national securities exchange and the Association's CQS System, the market maker shall maintain identical quotations in each system.]

[(b) A CQS market maker's quotation must be for at least one normal unit of trading.]

[(c) A CQS market maker shall be obligated to have available in close proximity to the Nasdaq terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.]

[(d) Minimum Price Variation]

[(1) The minimum quotation increment shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected.]

[(2) A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of paragraph (1) above) priced in an increment of less than \$0.01 will be adjusted by the Nasdaq Market Center down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.]

[6340. Normal Business Hours]

[A CQS market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. A CQS market maker shall designate a closing time for each security between 4:00 p.m. and 6:30 p.m. Eastern Time. A designated closing time may only be on the hour or half hour. A CQS market maker whose market is closed may re-open its market as late as 6:30 p.m. Eastern Time upon appropriate notification to the Association.]

[6350. Withdrawal of Quotations]

[(a) A CQS market maker that wishes to withdraw quotations in a reported security shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations.]

[(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature,

may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120.]

[6360. Voluntary Termination of Registration]

[A CQS market maker may voluntarily terminate its registration in a reported security by withdrawing its quotations from The Nasdaq Stock Market. A CQS market maker that voluntarily terminates its registration in a reported security may not, however, re-register as a CQS market maker in that security for two (2) business days.]

[6370. Suspension and Termination of Quotations by Association Action]

[The Association may, pursuant to the procedures set forth in the Association's Code of Procedure as set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a CQS market maker's authority to enter quotations in one or more reported securities for violations of the applicable requirements or prohibitions of the Rule 4000, 5000 and 6300 Rules Series.]

[6400. Reporting Transactions in Listed Securities]

[The provisions of this Rule 6400 Series shall apply to all over-the-counter transactions in listed securities that are required to be reported to the Consolidated Tape ("eligible securities"), as provided in the Plan filed by the Association pursuant to SEC Rule 11Aa3-1 under the Act ("Plan"). Rule 6420 shall not apply to transactions executed through CAES (Computer Assisted Execution System) or ITS/CAES (Intermarket

Trading System/Computer Assisted Execution System) by market makers registered as CQS market makers.]

[6410. Definitions]

[(a) Terms used herein shall have the meaning as defined in the By-Laws and Rules of the Association, SEC Rule 11Aa3-1 and the Plan, unless otherwise defined herein.]

[(b) Reserved.]

[(c) "Consolidated Tape" means the consolidated transaction reporting system for the dissemination of last sale reports in eligible securities required to be reported pursuant to the Plan.]

[(d) "Eligible securities" means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450.]

[(e) "Initial Public Offering" — a security is subject to an "initial public offering" if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Act.]

[(f) "Non-Registered Reporting Member" means a member of the Association that is not a Registered Reporting Member.]

[(g) "Over-the-counter transaction" means a transaction in an eligible security effected otherwise than on a national securities exchange.]

[(h) "Registered Reporting Member" means a member of the Association that is registered as a CQS market maker, pursuant to Rule 6320, in a particular eligible security. A member is a Registered Reporting Member in only those eligible securities for which it has registered as a CQS market maker. A member shall cease being a Registered Reporting Member in an eligible security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of the Association.]

[(i) "Stop Stock Price" means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.]

[(j) "Stop Stock Transaction" means any transaction that meets both of the following conditions:]

[(1) the transaction is the result of an order in which a member and another party agree that the order shall be executed at a Stop Stock Price or better; and]

[(2) the order is executed at the Stop Stock Price.]

[6420. Transaction Reporting]

[(a) When and How Transactions are Reported]

[(1) (A) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late.]

[(B) Registered Reporting Members shall transmit to the Nasdaq Market Center, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4:00 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades. Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis the following day between 8:00 a.m. and 6:30 p.m. Eastern Time.]

[(2) (A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed

between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late.]

[(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center, or by telephone to the Nasdaq Market Center Operations Department if the Nasdaq Market Center reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades. Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis the following day between 8:00 a.m. and 6:30 p.m.]

[(3) (A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:]

[(i) Last sale reports of transactions in eligible securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall also be

designated as .T trades. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 p.m. as .T trades.]

[(ii) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date as ".T" trades. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 p.m. as .T trades.]

[(iii) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time and be designated "as/of" trades.]

[(iv) The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively by paragraphs (b), (c), and (d) below.]

[(B) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the Nasdaq Market Center is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the Nasdaq Market Center, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.]

[(4) All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.]

[(5) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of the Rule 2110.]

[(6) All members shall report to Nasdaq using the .W modifier transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market.]

[(7) Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the Nasdaq Market Center that contain the time of execution, but that do not contain the appropriate modifier.]

[(8) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.¹¹

[¹ Implementation of the .PRP modifier for listed securities is delayed until June 6, 2005.]

[(9) All members shall append the .W trade report modifier to reports of Stop Stock Transactions (as such term is defined in Rule 6410) and include the time at which the member and the other party agreed to the Stop Stock Price (as such term is defined in Rule 6410) in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.]

[(10) To identify pre-opening and after-hours trades reported late, Nasdaq shall convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.]

[(b) Which Party Reports Transaction]

[(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.]

[(2) In transactions between two Registered Reporting Members, only the member representing the sell side shall report.]

[(3) In transactions between a Registered Reporting Member and a Non-Registered Reporting Member, only the Registered Reporting Member shall report.]

[(4) In transactions between Non-Registered Reporting Members, only the member representing the sell side shall report.]

[(5) In transactions conducted through a Reporting ECN (as defined in Rule 6110), the Reporting ECN shall ensure that the transactions are reported in accordance with Rule 6130(c).]

[(c) Information To Be Reported]

[Each last sale report shall contain the following information:]

[(1) Stock symbol of the eligible security;]

[(2) Number of shares (odd lots shall not be reported);]

[(3) Price of the transaction as required by paragraph (d) below;]

[(4) A symbol indicating whether the transaction is a buy, sell, or cross;]

[(5) The time of execution expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report.]

[(d) Procedures for Reporting Price and Volume]

[Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:]

[(1) For agency transactions, report the number of shares and the price excluding the commission charged.]

[Example:]

[SELL as agent 100 shares at 40 less a commission of \$12.50;]

[REPORT 100 shares at 40.]

[(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.]

[Example:]

[SELL as agent 100 shares at 40 less a commission of \$12.50;]

[BUY as agent 100 shares at 40 plus a commission of \$12.50;]

[REPORT 100 shares at 40.]

[(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge.]

[Example:]

[BUY as principal 100 shares from another member at 40 (no mark-down included).]

[REPORT 100 shares at 40.]

[Example:]

[BUY as principal 100 shares from a customer at 39 3/4, which includes a 1/8 mark-down from prevailing market of 39 7/8;]

[REPORT 100 shares at 39 7/8.]

[Example:]

[BUY as principal 100 shares from a customer at 39.75, which includes a \$0.10 mark-down from prevailing market of \$39.85;]

[REPORT 100 shares at 39.85.]

[Example:]

[SELL as principal 100 shares to a customer at 40 1/8, which includes a 1/8 mark-up from the prevailing market of 40;]

[REPORT 100 shares at 40.]

[Example:]

[SELL as principal 100 shares to a customer at 40.10, which includes a .10 mark-up from the prevailing market of 40;]

[REPORT 100 shares at 40.]

[(B) Exception: A "riskless" principal transaction in which a member, after having received an order to buy, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the Nasdaq Market Center:]

[(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.]

[(ii) Regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:]

[a. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or]

[b. a non-tape, non-clearing report with a capacity indicator of "riskless principal," if a clearing report is not necessary to clear the transaction.]

[A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.]

[Example:]

[BUY as principal 100 shares from another member at 40 to fill an existing order;]

[SELL as principal 100 shares to a customer at 40 plus mark-up of \$12.50;]

[REPORT 100 shares at 40 by submitting to the Nasdaq Market Center either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:]

[(1) where required by this Rule, a tape report marked with a "principal" capacity indicator; and]

[(2) either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.]

[Example:]

[BUY as principal 100 shares on an exchange at 40 to fill an existing order;]

[SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.]

[DO NOT REPORT (will be reported by exchange).]

[(e) Transactions Not Required To Be Reported]

[The following types of transactions shall not be reported for inclusion on the Consolidated Tape:]

[(1) transactions executed on an exchange;]

[(2) odd-lot transactions;]

[(3) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf distributions) or of an unregistered secondary distribution effected off the floor of an exchange;]

[(4) transactions made in reliance on Section 4(2) of the Securities Act of 1933;]

[(5) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;]

[(6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;]

[(7) purchases of securities off the floor of an exchange pursuant to a tender offer, and]

[(8) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.]

[(f) Reporting Cancelled Trades]

[(1) Obligation and Party Responsible for Reporting Cancelled Trades]

[With the exception of trades cancelled by Nasdaq staff in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6420 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).]

[(2) Deadlines for Reporting Cancelled Trades]

[(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the time the trade is cancelled.]

[(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:13:30 p.m., but before 5:15 p.m. on the date of

execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.]

[(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 6:30 p.m.]

[(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.]

[(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 6:30 p.m.]

[(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) by 6:30 p.m. on the date of cancellation if the trade is cancelled before 6:30 p.m., or (ii) by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.]

[(G) For purposes of determining the deadline by which a trade cancellation must be reported to Nasdaq pursuant to subparagraph (f) of

this rule the term "cancelled" shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.]

[Cross Reference–IM-4632, Transaction Reporting]

[IM-6420-1. Transactions in Eligible Securities]

**[SUMMARY OF PROVISIONS GOVERNING MEMBERS'
REQUIREMENTS TO REPORT TRANSACTIONS IN ELIGIBLE
SECURITIES]**

[Chart 1 — General Reporting Requirements Under Rule 6420(b)]

[Member]	[Transaction]	[Member Reports When Contra-Party Is]			
		[Registered Reporting Member]	[Non-Registered Reporting Member]	[Exchange]	[Customer]
[Registered Reporting Member]	[buys from:]	[No]	[Yes]	[No]	[Yes]
	[sells to:]	[Yes]	[Yes]	[No]	[Yes]

[Non-Registered Reporting Member]	[buys from:]	[No]	[No]	[No]	[Yes]
	[sells to:]	[No]	[Yes]	[No]	[Yes]
[ACT ECN]		[See 6130(c)]	[See 6130(c)]	[No]	[See 6130(c)]

[Chart II — Reporting Requirements for "Riskless" Transactions as Defined in Rule 6420(d)(4)]

[Member]	[Transaction]	[Member Reports When Contra-Party Is]			
		[Registered Reporting Member]	[Non-Registered Reporting Member]	[Exchange]	[Customer]
[Registered Reporting Member]	[buys from customer and sells to:]	[Yes]	[Yes]	[No]	[Yes]
	[sells to customer and buys from:]	[No]	[Yes]	[No]	[Yes]

[Non-Registered Reporting Member]	[buys from customer and sells to:]	[No]	[Yes]	[No]	[Yes]
	[sells to customer and buys from:]	[No]	[No]	[No]	[Yes]

[6430. Suspension of Trading]

[(a) Members shall promptly notify the Association whenever they have knowledge of any matter related to an eligible security or the issuer thereof which has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.]

[(b) Whenever any market for any eligible security halts or suspends trading in such security, members may continue to conduct trading in such security during the period of any such halt or suspension and shall continue to report all last sale prices reflecting transactions in such security, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120.]

[6440. Trading Practices]

[(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such

security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.]

[(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an eligible security or creating or inducing a false or misleading appearance with respect to the market in such security:]

[(1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or]

[(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or]

[(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.]

[(c) No member shall execute purchases or sales of any eligible security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.]

[(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.]

[(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an eligible security shall be deemed to be a manipulative operation.]

[(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.]

[(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.]

[(e) No member shall make any statement or circulate and disseminate any information concerning any eligible security which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.]

[(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an eligible security, unless such joint account is promptly reported to the Association. The report should contain the following information for each account:]

[(1) Name of the account, with names of all participants and their respective interests in profits and losses;]

[(2) a statement regarding the purpose of the account;]

[(3) name of the member carrying and clearing the account; and]

[(4) a copy of any written agreement or instrument relating to the account.]

[(g) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.]

[(h) (1) A member may, but is not obligated to, accept a stop order in an eligible security.]

[(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.]

[(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.]

[(2) A member may, but is not obligated to, accept stop limit orders in eligible securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.]

[(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.]

[6450. Eligible Securities]

[Transactions required to be reported on the Consolidated Tape (eligible securities) include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed on the American Stock Exchange and/or the New York Stock Exchange and the following securities listed on regional stock exchanges.]

[SYMBOL]	[SECURITY]
-----------------	-------------------

[ALK\$]	[Alaska Airlines \$2.77 Pfd.]
[AND]	[Alden Electronic]
[AFI\$D]	[Amer. Financial Corp. Pfd.D]
[AFI\$E]	[Amer. Financial Corp. Pfd.E]
[AFI\$F]	[Amer. Financial Corp. Pfd.F]
[AFI\$G]	[Amer. Financial Corp. Pfd.G]
[AFI\$H]	[Amer. Financial Corp. Pfd.H]
[BPP]	[Ballys Park Place]
[BSI]	[Bastian Inds., Inc.]
[BSI\$]	[Bastian Inds., Inc. \$1.00 Pfd]
[BBM]	[Berkeley Bio Medical]
[CSW]	[Canada Southern Petroleum]
[CNO]	[Casco Northern Corp.]
[CJI]	[Central Jersey Industries]
[CTE]	[Columbia Chase Corp.]
[DCT]	[DC Trading Development Corp.]
[EDG]	[Enterprise Devel. Group, Inc.]
[GEO]	[Geothermal Resources]
[GLR]	[Grolier Inc.]

[HWK]	[Hardwicke Companies, Inc.]
[MOD]	[Modine Manufacturing Company]
[OKC]	[OKC Limited Partnership]
[OGS]	[O's Gold Seed Company]
[PRI]	[Pacific Resources]
[PJH]	[Piper Jaffray, Inc.]
[PRB]	[Provident Bancorp, Inc.]
[REL.Z]	[Reliance Group 87 Wts.]
[SOU\$A]	[Southern Cal Gas 6% A Pfd.]
[SOU\$Q]	[Southern Cal Gas 6% Pfd.]
[SYN\$B]	[Syntex Corp. Pfd.B]
[TEP\$]	[Tucson Elec. Power Pfd.]
[UTC]	[United Canso Oil and Gas]
[WH]	[White Motor Corporation]

6500. OTC BULLETIN BOARD[®] SERVICE

* * * * *

6540. Requirements Applicable to Market Makers

(a) No Change.

(b) An alternative trading system (ATS), as defined in Regulation ATS, Rule 300(a), or electronic communications network (ECN) as defined in SEC Rule [11Ac1-1(a)(8)] 600(b)(23), shall be eligible to participate in the Service, provided however, that such ATS or ECN is an NASD member and otherwise meets the requirements for participation set forth in the OTC Bulletin Board Rules. Where used in the OTC Bulletin Board Rules, the term "market maker" shall be construed to include a participating ATS or ECN.

(c) through (e) No Change.

* * * * *

6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS

* * * * *

6950. ORDER AUDIT TRAIL SYSTEM

6951. Definitions

For purposes of the Rule 6950 Series:

(a) through (d) No Change.

(e) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in [Securities Exchange Act] SEC Rule [11Ac1-1(a)(8)] 600(b)(23).

(f) through (m) No Change.

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (13) No Change

(14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Rule [11Ac1-4(c)] 604(b) under the Securities Exchange Act of 1934;

(15) through (18) No Change.

(c) through (d) No Change.

* * * * *

6100A. TRACS TRADE COMPARISON SERVICE

6110A. Definitions

(a) The term “ADF-eligible security” means an NMS stock as defined in SEC Rule 600(b)47).

[(a)](b) No Change.

[(b)](c) No Change.

[(c)](d) No Change.

[(d)](e) No Change.

[(e)](f) No Change.

[(f) Reserved.]

(g) No Change.

(h) The term "Reportable TRACS Transaction" shall mean those transactions in a [TRACS] ADF-eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule 4630A Series. The term also shall include transactions in [TRACS] ADF-eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) through (j) No Change.

(k) The term "TRACS ECN" shall mean a member of NASD that is a Registered Reporting ADF ECN that elects to display orders in [NASD's Alternative Display Facility] the ADF and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

[(l) The term "TRACS Eligible Security" shall mean Nasdaq National Market, Nasdaq Capital Market security, and Nasdaq Convertible Debt security.]

[(m)](l) The term "TRACS Market Maker" shall mean a member of NASD that is [registered as an NASD ADF Market Maker] a Registered Reporting ADF Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

[(n)](m) No Change.

6120A. Participation in TRACS Trade Comparison Feature by Participants in the Alternative Display Facility

The following Rules 6120A through 6190A apply to members that effect transactions in ADF-eligible securities through the [Alternative Display Facility] ADF.

(a) Mandatory Participation for Clearing Agency Members

(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities through the [Alternative Display Facility,] ADF, which are not locked-in and sent directly to Deposit Trust Clearing Corporation (“DTCC”) by that member[.], unless the member reports the trade to another reporting facility designated by the SEC as being authorized to accept trade reports for trades executed otherwise than on an exchange. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in [the Rule 4630A Series] pertinent NASD rules.

(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:

(A) through (B) No Change.

(C) registration as [an NASD] a Registered Reporting ADF Market Maker [or ECN] for [Nasdaq] ADF-eligible securities pursuant to Rule 4611A[, if applicable,] and compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) through (E) No Change.

(3) through (4) No Change.

(5) Participation in the TRACS trade comparison feature as a[n] TRACS ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:

(A) through (E) No Change.

(6) No Change.

(b) Participant Obligations in TRACS

(1) Access to TRACS

Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in [TRACS] ADF-eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol ("MMID" or "MPID"), and use that identifier for trade reporting and audit trail purposes.

(2) Market Maker Obligations

(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for [TRACS] ADF-eligible securities.

(B) through (D) No Change.

(3) Order Entry Firm Obligations

(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS

Operation Center to verify authorization for submitting trade data to the TRACS system for [TRACS] ADF-eligible securities.

(B) through (D) No Change.

(4) No Change.

(5) ECN Obligations

(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for [TRACS] ADF-eligible securities.

(B) through (D) No Change.

* * * * *

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

—Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.

—Rule 3360 — Failure to timely file reports of short positions on Form NS-1.

—Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.

—Rule 8211, Rule 8212, and Rule 8213 — Failure to submit trading data as requested.

—Article IV of the NASD By-Laws — Failure to timely submit amendments to Form BD.

—Article V of the NASD By-Laws — Failure to timely submit amendments to Form U4.

—Article V of the NASD By-Laws — Failure to timely submit amendments to Form U5.

—Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.

—Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

—Rule 3070 — Failure to timely file reports.

—Rule 4619(d) — Failure to timely file notifications pursuant to SEC Regulation M.

—Rules 4632, 4642, 4652, 4632A, 5430, 6130, 6170, 6130A, 6170A, 6230, 6420, 6550, 6620, and 6720 — Transaction reporting in equity and debt securities.

—Rules 6954 and 6955 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").

—Rule 11870 — Failure to abide by Customer Account Transfer Contracts.

—Failure to provide or update contact information as required by NASD Rules.

—SEC Exchange Act Rule [11Ac1-4] 604 — Failure to properly display limit orders.

—SEC Exchange Act Rule [11Ac1-1(c)(5)] 602(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").

—SEC Exchange Act Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.

—SEC Exchange Act Rule 17a-10 — Failure to timely file Schedule I.

—MSRB Rule A-14 — Failure to timely pay annual fee.

—MSRB Rule G-12 — Failure to abide by uniform practice rules.

—MSRB Rule G-14 — Failure to submit reports.

—MSRB Rule G-36 — Failure to timely submit reports.

—MSRB Rule G-37 — Failure to timely submit reports for political contributions.

—MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.

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