

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 type="checkbox"/>	Section 19(b)(3)(A) <input checked="" 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 checked="" 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).

The proposed rule change expands the prohibition on locking or crossing quotations on the ADF in NMS stocks to include pre-opening and post-closing quotations, extends the obligation to comply with ADF rules to pre-opening quotes, and replaces the specific modifiers identified in Rule 4632(a)(4) with a more general reference.

**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  Vice President and Associate 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

For complete Form 19b-4 instructions please refer to the EFFS website.

**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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Exhibit Sent As Paper Document

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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Exhibit Sent As Paper Document

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”),<sup>1</sup> 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 4130A, 4300A, 4613A, 4617A, and 4632A regarding the Alternative Display Facility (“ADF”). Specifically, the proposed rule change expands the prohibition on locking or crossing quotations in NMS stocks to include pre-opening and post-closing quotations, extends the obligation to comply with the ADF rules to pre-opening quotes, and replaces the specific modifiers identified in Rule 4632A(a)(4) with a more general reference to modifiers as specified by NASD.

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

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change to amend certain NASD rules as necessary to effectuate Regulation NMS 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

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

the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD rules without recourse to the membership for approval.

NASD has filed the proposed rule change for immediate effectiveness. The proposed rule change will be implemented on the Regulation NMS Trading Phase Date. Currently, that date is projected to be February 5, 2007.

**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 Order<sup>2</sup> and in conjunction with Nasdaq's registration as a national securities exchange. As of the Regulation NMS Trading Phase Date, the ADF will provide market participants (market makers and Electronic Communication Networks (or ECNs))<sup>3</sup> with the ability to post quotations in NMS stocks, as defined in SEC Rule 600(b)(47), and the ability to view quotations and report transactions in these securities 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 the firm quote and related rules.

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<sup>2</sup> Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (File No. SR-NASD-99-53).

<sup>3</sup> ECNs are defined under Regulation NMS in SEC Rule 600(b)(23).

On June 29, 2005, the SEC published its release adopting Regulation NMS.<sup>4</sup>

Regulation NMS established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equity markets. As part of the rules, Regulation NMS adopted SEC Rule 610, which, among other things, 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.

On September 28, 2006, the Commission approved SR-NASD-2006-091, which, among other things, amended NASD rules (primarily, ADF rules) to align them with Regulation NMS and to enhance the clarity of the ADF rules. The purpose of this proposed rule change is to further those two goals by amending certain of the ADF rule changes approved in SR-NASD-2006-091 to: (1) expand the prohibition on locking or crossing quotations in NMS stocks to include the time periods of 8:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m.; (2) extend the obligation in Rule 4617A to comply with NASD rules to pre-opening quotes; and (3) replace the specific modifiers identified in Rule 4632A(a)(4) with a more general reference to modifiers as specified by NASD. The purpose behind each of these changes is discussed below.

(1) Locking or Crossing Quotations

As approved by the Commission in SR-NASD-2006-091, Rule 4613A generally prohibits members from displaying quotations on ADF that lock or cross a protected

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<sup>4</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

quotation during regular trading hours (i.e., between 9:30 a.m. and 4:00 p.m. Eastern Time).<sup>5</sup> ADF Trading Centers, however, are permitted to post quotations on ADF on a voluntary basis each trading day from 8:00 a.m. Eastern Time until 6:30 p.m. Eastern Time. The proposed rule change would extend the prohibition on locking and crossing quotations to members who voluntarily post quotes on ADF 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. In addition, the proposed rule change would delete Rule 4613A(e), which addresses locked and crossed quotation conditions in the ADF prior to opening, because the extension of the locking and crossing prohibition in Rule 4130A to that time period would render Rule 4613A(e) obsolete.

(2) Extension to ADF Rules to Pre-Opening Quotations

Although ADF Trading Centers are required to be open for business between 9:30 a.m. Eastern Time and 4:00 p.m. Eastern Time on business days, as noted above, they are permitted, on a voluntary basis, to post quotations on ADF between the hours of 8:00 a.m. and 9:30 a.m. Eastern Time or between 4:00 p.m. and 6:30 p.m. Eastern Time. As approved by the Commission in SR-NASD-2006-091, Rule 4617A requires an ADF Trading Center whose quotes are open after 4:00 p.m. Eastern Time to comply, while its 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. The proposed rule change would extend this requirement to ADF Trading Centers whose quotes are open between 8:00 a.m. and 9:30 a.m. Eastern Time.

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<sup>5</sup> Rule 610(d) of Regulation NMS requires NASD to establish, maintain, and enforce written rules concerning locking and crossing quotations.

Thus, in general, ADF rules would apply during the entire timeframe during which an ADF Trading Center is permitted to enter quotations on ADF: 8:00 a.m. through 6:30 p.m. Eastern Time.

Of particular note, this proposed change would, among other things, extend the order reporting requirements found in Rule 4300A(b)(1) and (2) and the firm quote requirement in Rule 4613A(c) to any quotations posted voluntarily before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time. Among the changes approved by the Commission in SR-NASD-2006-091 were amendments to Rule 4300A(e) requiring that ADF Trading Centers submit automated quotations, as defined in SEC Rule 600(b)(3), to the ADF. Automated quotations are, by their nature, firm; thus, the proposed rule change clarifies that the firm quote rule applies to all quotations submitted to the ADF, including quotations submitted before 9:30 a.m. or after 4:00 p.m. Eastern Time. Further, if a firm voluntarily quotes before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time, the member must submit order reports during that time period as required during the normal trading day.<sup>6</sup>

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<sup>6</sup> A member is generally required to submit order reports when the member displays a quote. If a member chooses not to quote before 9:30 a.m. or after 4:00 p.m., the member is not required to submit order reports during those time periods. If a member displays a quote on the ADF at any time during regular trading hours (i.e., 9:30 a.m. to 4:00 p.m. Eastern Time), the member must submit order reports continuously to NASD from the time an initial quote is displayed on the ADF in a security, irrespective of whether the member has a quote displayed on the ADF at the specific time that an order is received. If a member does not display a quote on the ADF in a specific security for the entire time period of 9:30 a.m. to 4:00 p.m. Eastern Time on a given trading day, the member would not be required to submit order reports on the subsequent trade date after the full day of non-quoting on the ADF unless the member displays a quote in that security on the ADF.

(3) Replacement of Specific Modifiers with General Language

Finally, the proposed rule change would replace the specific modifiers set forth in Rule 4632A(a)(4) with a more general reference to modifiers specified by NASD. As approved by the Commission in SR-NASD-2006-091, Rule 4632A includes specific trade report modifiers for Reporting Members to use when reporting transactions through TRACS if the trade has certain attributes. For example, if the trade is a Cash Trade, Rule 4632A, in the form currently approved by the Commission, would require the Reporting Member to include a “.C” modifier when reporting the trade to TRACS. The proposed rule change would amend Rule 4632A(a)(4) and delete the references to specific modifiers. Instead, the rule would require Reporting Members to append “applicable trade report modifiers as specified by NASD.”<sup>7</sup> Additionally, the proposed rule change deletes the trade report modifier for transactions based upon a single-priced opening, re-opening or closing transaction because this is an exchange function. NASD will provide

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<sup>7</sup> Rule 4632A(a)(4), as amended by SR-NASD-2006-091, also requires members reporting transactions to the ADF to append “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” Pursuant to this provision, NASD has the authority to prescribe additional modifiers be reported solely to NASD. For example, such authority has been used in the context of an update to ADF specifications to require additional modifiers to designate trades that qualify under two existing exemptions from SEC Rule 611 (qualified contingent trades and certain sub-penny trade-throughs). This authority may also be used to capture additional regulatory information that NASD deems necessary (e.g., NASD will require more specific delineation of the Intermarket Sweep exception than is required by the National Market System Plan specifications). The National Market System specifications identify both types of ISO orders with a single modifier. NASD, however, intends to distinguish between the ISO exceptions by requiring firms to use a separate modifier, as defined by NASD, in instances where the executing firm is responsible for sweeping the market. NASD will provide members with at least 30 days advance written notice and sufficient time to make the necessary systems changes relating to any additional new modifiers.

members with at least 30 days notice of any new modifiers or any change in existing modifiers.

As noted in Item 2 of this filing, the proposed rule change has been filed for immediate effectiveness. The proposed rule change will be implemented on the Regulation NMS Trading Phase Date. Currently, that date is projected to be February 5, 2007.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules must 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. NASD believes the proposed rule change 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**

Not applicable.

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<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>9</sup> in that the proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative for 30 days after filing. NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change merely makes clarifying amendments to rule changes already approved by the Commission in SR-NASD-2006-091 and removes the references to specific modifiers from the ADF rules. In accordance with Rule 19b-4,<sup>10</sup> NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. NASD proposes to make the proposed rule change operative on the Regulation NMS Trading Phase Date, which is projected to be February 5, 2007.

**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.

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<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 240.19b-4.

Exhibit 5. Text of proposed rule change marked to show additions to and deletions from the rule language approved by the Commission in SR-NASD-2006-091, as amended.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2007-001)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Alternative Display Facility Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , 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. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 4130A, 4300A, 4613A, 4617A, and 4632A regarding the Alternative Display Facility (“ADF”) to expand the prohibition on locking or crossing quotations in NMS stocks to include pre-opening and post-closing quotations, extend the obligation to comply with the ADF rules to pre-

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

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

<sup>3</sup> 17 CFR 240.19b-4.

opening quotes, and replace the specific modifiers identified in Rule 4632A(a)(4) with a more general reference to modifiers as specified by NASD. The text of the proposed rule change is attached as Exhibit 5 to the rule filing.

**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 Order<sup>4</sup> and in conjunction with Nasdaq's registration as a national securities exchange. As of the Regulation NMS Trading Phase Date, the ADF will provide market participants (market makers and Electronic Communication Networks (or ECNs))<sup>5</sup> with the ability to post quotations in NMS stocks, as defined in SEC Rule 600(b)(47), and the ability to view quotations and report transactions in these securities for consolidation and dissemination of data to vendors and ADF market participants. The facility provides for

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<sup>4</sup> Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (File No. SR-NASD-99-53).

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

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 the firm quote and related rules.

On June 29, 2005, the SEC published its release adopting Regulation NMS.<sup>6</sup> Regulation NMS established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equity markets. As part of the rules, Regulation NMS adopted SEC Rule 610, which, among other things, 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.

On September 28, 2006, the Commission approved SR-NASD-2006-091, which, among other things, amended NASD rules (primarily, ADF rules) to align them with Regulation NMS and to enhance the clarity of the ADF rules. The purpose of this proposed rule change is to further those two goals by amending certain of the ADF rule changes approved in SR-NASD-2006-091 to: (1) expand the prohibition on locking or crossing quotations in NMS stocks to include the time periods of 8:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m.; (2) extend the obligation in Rule 4617A to comply with NASD rules to pre-opening quotes; and (3) replace the specific modifiers identified in Rule 4632A(a)(4) with a more general reference to modifiers as specified by NASD. The purpose behind each of these changes is discussed below.

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<sup>6</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

(A) Locking or Crossing Quotations

As approved by the Commission in SR-NASD-2006-091, Rule 4613A generally prohibits members from displaying quotations on ADF that lock or cross a protected quotation during regular trading hours (i.e., between 9:30 a.m. and 4:00 p.m. Eastern Time).<sup>7</sup> ADF Trading Centers, however, are permitted to post quotations on ADF on a voluntary basis each trading day from 8:00 a.m. Eastern Time until 6:30 p.m. Eastern Time. The proposed rule change would extend the prohibition on locking and crossing quotations to members who voluntarily post quotes on ADF 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. In addition, the proposed rule change would delete Rule 4613A(e), which addresses locked and crossed quotation conditions in the ADF prior to opening, because the extension of the locking and crossing prohibition in Rule 4130A to that time period would render Rule 4613A(e) obsolete.

(B) Extension to ADF Rules to Pre-Opening Quotations

Although ADF Trading Centers are required to be open for business between 9:30 a.m. Eastern Time and 4:00 p.m. Eastern Time on business days, as noted above, they are permitted, on a voluntary basis, to post quotations on ADF between the hours of 8:00 a.m. and 9:30 a.m. Eastern Time or between 4:00 p.m. and 6:30 p.m. Eastern Time. As approved by the Commission in SR-NASD-2006-091, Rule 4617A requires an ADF Trading Center whose quotes are open after 4:00 p.m. Eastern Time to comply, while its quotes are open, with all NASD Rules that are not by their express terms, or by an

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<sup>7</sup> Rule 610(d) of Regulation NMS requires NASD to establish, maintain, and enforce written rules concerning locking and crossing quotations.

official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period. The proposed rule change would extend this requirement to ADF Trading Centers whose quotes are open between 8:00 a.m. and 9:30 a.m. Eastern Time. Thus, in general, ADF rules would apply during the entire timeframe during which an ADF Trading Center is permitted to enter quotations on ADF: 8:00 a.m. through 6:30 p.m. Eastern Time.

Of particular note, this proposed change would, among other things, extend the order reporting requirements found in Rule 4300A(b)(1) and (2) and the firm quote requirement in Rule 4613A(c) to any quotations posted voluntarily before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time. Among the changes approved by the Commission in SR-NASD-2006-091 were amendments to Rule 4300A(e) requiring that ADF Trading Centers submit automated quotations, as defined in SEC Rule 600(b)(3), to the ADF. Automated quotations are, by their nature, firm; thus, the proposed rule change clarifies that the firm quote rule applies to all quotations submitted to the ADF, including quotations submitted before 9:30 a.m. or after 4:00 p.m. Eastern Time. Further, if a firm voluntarily quotes before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time, the member must submit order reports during that time period as required during the normal trading day.<sup>8</sup>

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<sup>8</sup> A member is generally required to submit order reports when the member displays a quote. If a member chooses not to quote before 9:30 a.m. or after 4:00 p.m., the member is not required to submit order reports during those time periods. If a member displays a quote on the ADF at any time during regular trading hours (i.e., 9:30 a.m. to 4:00 p.m. Eastern Time), the member must submit order reports continuously to NASD from the time an initial quote is displayed on the ADF in a security, irrespective of whether the member has a quote displayed on the ADF at the specific time that an order is received. If a member does not

(C) Replacement of Specific Modifiers with General Language

Finally, the proposed rule change would replace the specific modifiers set forth in Rule 4632A(a)(4) with a more general reference to modifiers specified by NASD. As approved by the Commission in SR-NASD-2006-091, Rule 4632A includes specific trade report modifiers for Reporting Members to use when reporting transactions through TRACS if the trade has certain attributes. For example, if the trade is a Cash Trade, Rule 4632A, in the form currently approved by the Commission, would require the Reporting Member to include a “.C” modifier when reporting the trade to TRACS. The proposed rule change would amend Rule 4632A(a)(4) and delete the references to specific modifiers. Instead, the rule would require Reporting Members to append “applicable trade report modifiers as specified by NASD.”<sup>9</sup> Additionally, the proposed rule change

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display a quote on the ADF in a specific security for the entire time period of 9:30 a.m. to 4:00 p.m. Eastern Time on a given trading day, the member would not be required to submit order reports on the subsequent trade date after the full day of non-quoting on the ADF unless the member displays a quote in that security on the ADF.

<sup>9</sup> Rule 4632A(a)(4), as amended by SR-NASD-2006-091, also requires members reporting transactions to the ADF to append “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” Pursuant to this provision, NASD has the authority to prescribe additional modifiers be reported solely to NASD. For example, such authority has been used in the context of an update to ADF specifications to require additional modifiers to designate trades that qualify under two existing exemptions from SEC Rule 611 (qualified contingent trades and certain sub-penny trade-throughs). This authority may also be used to capture additional regulatory information that NASD deems necessary (e.g., NASD will require more specific delineation of the Intermarket Sweep exception than is required by the National Market System Plan specifications). The National Market System specifications identify both types of ISO orders with a single modifier. NASD, however, intends to distinguish between the ISO exceptions by requiring firms to use a separate modifier, as defined by NASD, in instances where the executing firm is responsible for sweeping the market. NASD will provide members with at least 30 days advance written notice and sufficient time to make the necessary systems changes relating to any additional new modifiers.

deletes the trade report modifier for transactions based upon a single-priced opening, re-opening or closing transaction because this is an exchange function. NASD will provide members with at least 30 days notice of any new modifiers or any change in existing modifiers.

NASD has filed the proposed rule change for immediate effectiveness. NASD is proposing that the proposed rule change be implemented on the Regulation NMS Trading Phase Date. Currently, that date is projected to be 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,<sup>10</sup> which requires, among other things, that NASD rules must 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. NASD believes the proposed rule change 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.

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<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-001 on the subject line.

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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-2007-001. 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-2007-001 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.<sup>12</sup>

Nancy M. Morris

Secretary

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

**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-2006-091. The Commission approved SR-NASD-2006-091, as amended, on September 28, 2006, and these changes will become effective on the Regulation NMS Trading Phase Date. Currently, that date is projected to be February 5, 2007.

**4000A. NASD ALTERNATIVE DISPLAY FACILITY**

**4100A. General**

\* \* \* \* \*

**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 any time between 8:00 a.m. and 6:30 p.m. Eastern Time 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 any time between 8:00 a.m. and 6:30 p.m. Eastern Time 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 any time between 8:00 a.m. and 6:30 p.m. Eastern Time 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 any time between 8:00 a.m. and 6:30 p.m. Eastern Time at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective NMS Plan.

(b) through (d) No Change.

\* \* \* \* \*

**4300A. Quote and Order Access Requirements**

(a) No Change.

(b) Subject to the terms and conditions contained herein, all ADF Trading Centers that display quotations in NASD's 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 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 (N) No Change.

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

(2) through (7) No Change.

(c) through (g) No Change.

\* \* \* \* \*

**4600A. TRADING IN NASDAQ SECURITIES**

\* \* \* \* \*

**4613A. Character of Quotations**

(a) through (d) No Change.

**[(e) Obligations Regarding Locked/Crossed Quotation Conditions in the ADF Prior to Opening]**

[(1) Locked/Crossed 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 ADF Trading Center that is a party to a lock/cross because the ADF Trading Center either has entered a bid (ask) quotation that locks/crosses another ADF Trading Center’s quotation(s) or has had its quotation(s) locked/crossed by another ADF Trading Center (“party to a lock/cross”) may, beginning at 9:20 a.m. Eastern Time, send an order, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving ADF Trading Center’s quoted price (“Trade-or-Move Message”). Any 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 10 seconds of receiving such message either: fill the incoming order for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the ADF.]

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

[(A) Before a Registered Reporting ADF ECN enters a quote that would lock or cross the ADF 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 ADF.]

[(B) If a Registered Reporting ADF Market Maker locks or crosses the 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.]

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

[(3) (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 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 an

ADF Trading Center is representing an agency order, the 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.]

[(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 an ADF Trading Center is representing an agency order, the 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 5,000 shares.]

[(4) An ADF Trading Center 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 ADF.]

[(5) An ADF Trading Center 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.]

[(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 Rule 3110. An agency order shall not include an order(s) that is for the benefit of an ADF Trading Center 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 in the security at issue.]

\* \* \* \* \*

**4617A. Normal Business Hours**

An ADF Trading Center 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 may [remain] be open for business on a voluntary basis for any period of time between 8:00 a.m. Eastern Time and 9:30 a.m. Eastern Time or between 4:00 p.m. Eastern Time and 6:30 p.m. Eastern Time. An ADF Trading Center whose quotes are open before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while its 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 8:00 a.m. to 9:30 a.m. Eastern Time or the 4:00 p.m. to 6:30 p.m. Eastern Time periods.

\* \* \* \* \*

**4632A. Transactions Reported by Members to TRACS**

**(a) When and How Transactions are Reported to TRACS**

(1) through (3) No Change.

**(4) Other Modifiers Required to be Reported to TRACS**

Reporting Members also shall append the [following] applicable trade report modifiers as specified by NASD to all last sale reports, including reports of “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] denot[es]ing 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) ([n]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] designated 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 report[s] reflects a price different from the current market when the execution price is based on a prior reference point in time ([n]Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed[. The .PRP] and the designated 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,] (H) 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,] (I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEC Rule 611[. ] ([In order]Note: to ensure consistency in the usage of SEC Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEC Rule 611[.]);

[(K)] (J) [I]if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEC Rule 611, members must, in addition to the modifier required in paragraph (I) above[ .X], append an appropriate unique modifier, specified by NASD, that identifies the specific

applicable exception or exemption from SEC Rule 611 that a member is relying upon[. ] (In order)Note: to ensure consistency in the usage of SEC Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specification approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEC Rule 611[.]); and

[(L)] (K) [A]any other modifier as specified by NASD or the Securities and Exchange Commission.

**(5)** No Change.

**(b)** through **(j)** No Change.