

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2005 - 087

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐Section 19(b)(2) ☒Section 19(b)(3)(A) ☐Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires Exhibit 2 Sent As Paper Document
☐Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to Reflect Nasdaq's Separation from NASD Upon Nasdaq's Anticipated Approval as a National Securities Exchange

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
(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.

STEPHANIE DUMONT,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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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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 Sent As Paper Document

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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 Sent As Paper Document

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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”), 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 the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), NASD By-Laws, NASD Regulation By-Laws, NASD Dispute Resolution By-Laws, and NASD rules to reflect Nasdaq’s separation from NASD upon Nasdaq’s anticipated approval as a national securities exchange, to make certain changes to the rules that govern quoting and trading through the NASD Alternative Display Facility (“ADF”) and to establish rules for the trade reporting of transactions otherwise than on an exchange through the new Trade Reporting Facility.¹

The text of the proposed rule change is attached as Exhibit 5 to this Rule Filing. Proposed new language is underlined; proposed deletions are in brackets. All NASD rules that do not have rule text changes specified in Exhibit 5 remain unchanged and effective for all NASD members.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change 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. Changes to the Delegation Plan, NASD Regulation By-Laws, and NASD Dispute Resolution By-Laws were approved by the Executive Committee on the same date. Proposed changes to the NASD By-Laws were previously approved by the Board of Governors of NASD on July 25, 2002, and were submitted to the membership for approval. The consent solicitation process was completed on August 20, 2002, the date on which NASD received consents representing a majority of members eligible to vote. 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.

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

(a) Purpose

The purpose of this proposed rule change is threefold: (1) to amend NASD rules to reflect the anticipated approval of Nasdaq as a national securities exchange² and its resultant separation from NASD; (2) to make certain clarifying and conforming changes to the rules governing quoting and trading through the ADF; and (3) to establish rules for

¹ The facility has been named the "Trade Reporting Facility" for purposes of this proposed rule change. The official name of the entity, however, has not yet been determined.

² Securities Exchange Act Release No. 44396 (June 7, 2001), 66 Fed. Reg. 31952 (June 13, 2001) (File No. 10-131).

the trade reporting of transactions otherwise than on an exchange through the Trade Reporting Facility.³

Proposed Changes Relating to the Separation of Nasdaq

In 2000, NASD began restructuring its relationship with Nasdaq, which operates as an independent, for-profit company. As the result of a two-phase private placement of Nasdaq shares, a public offering recently completed in January 2005 and other dispositions of NASD shares, NASD's common stock ownership interest in Nasdaq has been reduced to a minority interest. Before Nasdaq can fully separate from NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has submitted drafts of proposed additional amendments to its Form 1 previously filed with the SEC requesting exchange registration. NASD continues to maintain greater than 50% of the voting control through its ownership of one outstanding share of Series B Preferred Stock until exchange registration is granted. Once Nasdaq obtains exchange

³ On December 7, 2001, NASD filed with the Commission SR-NASD-2001-90, a proposed rule change to amend NASD rules to reflect Nasdaq's separation from NASD upon its approval as a national securities exchange and to establish rules governing trading otherwise than on an exchange, including transactions effected through the ADF. On July 24, 2002, the Commission approved SR-NASD 2002-97, which authorized NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90. See Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). NASD subsequently filed for immediate effectiveness proposed rule changes to extend the pilot until July 26, 2005. See Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003); Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004); and Exchange Act Release No. 50601 (October 28, 2004), 69 FR 64611 (November 5, 2004). NASD intends to withdraw SR-NASD-2001-90, and this proposed rule change is intended to replace and update that rule filing.

registration, the share of Series B Preferred Stock will automatically lose its voting rights and will be redeemed by Nasdaq for \$1.00.

Thus, upon Nasdaq's registration as a national securities exchange, Nasdaq and NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. To effectuate that change, NASD must modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this separation of Nasdaq from NASD. These changes include removing references in the Delegation Plan to Nasdaq as a subsidiary and delegation of authority to Nasdaq; revising the NASD By-Laws, NASD Regulation, Inc. By-Laws and NASD Dispute Resolution, Inc. By-Laws to remove references to Nasdaq as a subsidiary of NASD; deleting Nasdaq-specific rules, such as listing and qualification requirements; replacing references to "Nasdaq" with "NASD" or "exchange," as applicable; and renaming and renumbering certain rules.⁴ Provided below are descriptions of the more significant proposed rule changes to reflect Nasdaq's separation from NASD.

Deleted Rules

The following rules have been deleted by NASD in their entirety because they either relate exclusively to participation in, and operation of, the Nasdaq Stock Market or will no longer be applicable upon the separation of Nasdaq from NASD: Rules 2852, 2854 and 2870 through 2885 related to Index Warrants listed on Nasdaq; Rules 5100 through 5133 and Rule 8212 related to the Nasdaq International Service; the Rule 5200

⁴ This proposed rule change also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

Series related to Intermarket Trading System/Computer Assisted Execution System (ITS/CAES);⁵ the Rule 6300 Series related to the Consolidated Quotations Service (CQS);⁶ the Rule 6400 Series relating to reporting transactions in exchange-listed securities;⁷ the Rule 6800 Series related to the Mutual Fund Quotation Service; and Rule 11890 related to Clearly Erroneous Transactions.

Rule 2840 Series Related to Trading in Index Warrants

The proposed rule change would delete language in the Rule 2840 Series related to index warrants listed on the Nasdaq Stock Market. The existing rule series was promulgated because Nasdaq intended to list such index warrants. The remainder of Rule 2840 Series remains unchanged, as it has continued applicability to NASD members that are not also members of an exchange on which they trade index warrants.

Rules 2850 through 2885 Related to Position Limits and Options Trading

To reflect Nasdaq's separation from NASD, the proposed rule change deletes from Rules 2850 through 2885 all language related to position limits and transactions in index warrants and options traded on Nasdaq. However, the rule change retains all provisions related to options trading in the listed and over-the-counter ("OTC") markets.

Rule 5300 Series Related to PORTAL Securities

⁵ NASD is considering the appropriate quoting and trading structure and rules that will be applicable to exchange-listed securities other than Nasdaq securities. Its current intention is to permit quoting and trade reporting of these securities through the ADF and to permit trade reporting through the Trade Reporting Facility. Accordingly, proposed changes relating to quoting and trading in these securities will be addressed in a future submission with the SEC.

⁶ Id.

The current Rule 5300 Series provides qualification and transaction reporting requirements relating to PORTAL Securities, which are foreign and domestic securities that are eligible for resale under SEC Rule 144A. The proposed rule change deletes the PORTAL requirements relating to the qualification or designation of PORTAL securities, as that function will be performed by Nasdaq. Transactions in PORTAL securities, however, will be reported to NASD; therefore, the proposed rule change retains those rules and has relocated them to the Rule 6700 Series.

Rules 6500 through 6700 Series Related to OTC Equity Securities

The proposed rule change would combine the existing Rule 6600 and 6700 Series into a single Rule 6600 Series that governs transactions in “OTC equity securities,” as that term is defined in the rules. The proposed combination is intended to eliminate redundancies in the existing rules, while maintaining all of the regulatory requirements for trading and reporting transactions in such securities.

The proposed rule change also includes separate definitions for a “non-exchange listed security” and “OTC Equity Security,” with the latter including certain exchange-listed securities that do not otherwise qualify for real-time reporting. NASD believes this is necessary given that the trade reporting obligations under the Rule 6600 Series apply to certain exchange-listed securities that do not otherwise qualify for real-time trade reporting, while other NASD requirements, such as current Rule 6740, do not apply to such securities. In addition, because NASD will continue to operate the OTC Bulletin Board, the proposed rule change retains the Rule 6500 Series. Throughout these rules,

⁷

Id.

references to Nasdaq and Nasdaq systems have been replaced with NASD, NASD systems or the OTC Reporting Facility⁸ as appropriate.

Rule 6900 Series Related to Direct Participation Programs (DPPs)

The Rule 6900 Series governs trade reporting of secondary market transactions by members in DPP securities other than transactions executed on a national securities exchange. The proposed rule change amends the Rule 6900 Series to reflect the fact that, upon the separation of Nasdaq and NASD, DPPs will no longer be reported to the Nasdaq Market Center, but will be reported to NASD.

Rule 6950 Series Related to Order Audit Trail System (OATS) Requirements

Upon Nasdaq's registration as an exchange, orders routed by members to Nasdaq will be subject to the OATS order transmittal requirements in Rule 6954(c)(6), relating to routes to non-members, including national securities exchanges. To ensure that NASD continues to receive from its members the same OATS data and linkage information that it receives today, the proposed rule change amends Rule 6954(c)(6) to require that members record the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable. As a result, it is our understanding that Nasdaq's exchange rules will require that orders transmitted to the Nasdaq Market Center continue to provide a routed order identifier. As such, the proposed rule change would require that members record that same routed order identifier in their transmittal reports, as they do today.

⁸ The service by which members can trade report OTC equity securities has been named the "OTC Reporting Facility" for purposes of this proposed rule change.

The proposed rule change also clarifies existing requirements related to routed order identifiers, specifically that members are permitted to use a routed order identifier that is different from the order identifier used for order origination purposes and that a member transmitting an order to another member must provide the routed order identifier to the member receiving the order.

Rule 9700 Series Related to Grievances Concerning Automated Systems

NASD is proposing to delete in its entirety the Rule 9700 Series, which sets forth procedures to address unspecified general grievances related to any automated quotation, execution or communication system operated by NASD or Nasdaq. Several of the provisions relate to the authority of the Nasdaq Listing and Review Council, which no longer will be part of NASD upon Nasdaq exchange registration. Moreover, this rule series is very general in nature, as it ostensibly is a “catch-all” for all potential grievances not otherwise provided for in NASD rules, including the Code of Procedure (Rule 9000 Series) and the Uniform Practice Code (Rule 11000 Series). NASD believes that whatever residual application this rule series may have served at some point, it has since been superceded by additional rules that provide redress for specific grievances, such as denial of access to services under Rule 9555 and denial of access complaints related to the ADF under Rule 4400A.

Proposed Changes Related to the Alternative Display Facility

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

The official name of that system, however, has not yet been determined.

Order⁹ and in conjunction with Nasdaq's anticipated registration as a national securities exchange. The ADF, which currently is operating on a pilot basis, provides ADF market participants (market makers and ECNs) 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.

NASD is proposing several clarifying and conforming changes to the ADF rules including: (1) clarification that certain ADF requirements apply not only to Registered Reporting ADF market makers, but to Registered Reporting ADF ECNs as well; (2) amendments to the ADF trade reporting requirements to make them more consistent with current Nasdaq trade reporting rules, including requiring that execution time be included in all ADF trade reports; (3) clarification that all applicable trade modifiers must be included in "as/of" trades; (4) amendments to the trade halt rule to include halt authority if there is extraordinary market activity in a security; and (5) deletion of the provisions in the ADF rules relating to passive market making, since passive market making will not be available on the ADF.

⁹ Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53).

Proposed Changes Related to the Trade Reporting Facility

Establishment of the Trade Reporting Facility

NASD is proposing to establish the Trade Reporting Facility, which will provide members another mechanism for reporting transactions effected otherwise than on an exchange. In this regard, Nasdaq and NASD propose to enter into a Limited Liability Company Agreement of The Trade Reporting Facility LLC between Nasdaq and NASD (“the LLC Agreement”), a copy of which is attached hereto as an Exhibit. The Trade Reporting Facility will be a facility of NASD and subject to NASD’s registration as a national securities association. Trades by members in Nasdaq-listed and other exchange-listed securities¹⁰ executed otherwise than on an exchange (“Non-System Trading”) may be reported to the Trade Reporting Facility. NASD will continue to have regulatory responsibility for the Non-System Trading reported to the Trade Reporting Facility, while Nasdaq agrees to pay the cost of regulation and will provide systems to enable broker-dealers to report trades to the Trade Reporting Facility. Nasdaq will be entitled to the economic interests derived from the Non-System Trading reported to the Trade Reporting Facility. This proposed structure will be in place for at least three years.

Pursuant to the LLC Agreement, NASD, as the “SRO Member” of the Trade Reporting Facility, will have the sole regulatory responsibility for the activities of the Trade Reporting Facility. The SRO Member will perform SRO Responsibilities including, but not limited to,

- (1) adoption, amendment and interpretation of policies arising out of and

regarding the operation of the facilities of the SRO, or regarding the meaning, administration, or enforcement of an existing rule of the SRO, including any generally applicable exemption from such a rule;

(2) approval of rule filings of the SRO prior to filing with the SEC;

(3) regulation of the Trade Reporting Facility's activities, including the right to review and approve the regulatory budget for the Trade Reporting Facility;

(4) securities regulation and any other matter implicating SRO Responsibilities; and

(5) real-time market surveillance (Nasdaq Marketwatch).

Nasdaq, as the "Business Member," will be primarily responsible for the management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Under Section 9(d) of the LLC Agreement, each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority.

The Trade Reporting Facility will be managed by or under the direction of a Board of Directors to be established by the parties. NASD will have the right to designate at least one Director, the SRO Member Director, who may be a member of NASD's Board of Governors or an officer or employee of NASD designated by the NASD Board of Governors. The SRO Member Director will have veto power over all major actions of the LLC Board. Major actions are defined in Section 10(e) of the LLC

Agreement to include:

- (1) approving pricing decisions that are subject to the SEC filing process;
- (2) approving contracts between the Trade Reporting Facility and the Business Member, any of its affiliates, directors, officers or employees;
- (3) approving Director compensation;
- (4) selling, licensing, leasing or otherwise transferring material assets used in the operation of the Trade Reporting Facility's business outside of the ordinary course of business with an aggregate value in excess of \$3 million;
- (5) approving or undertaking a merger, consolidation or reorganization of the Trade Reporting Facility with any other entity;
- (6) entering into any partnership, joint venture or other similar joint business undertaking;
- (7) making any fundamental change in the market structure of the Trade Reporting Facility from that contemplated by the Members as of the date of the LLC Agreement;
- (8) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 20 of the LLC Agreement;
- (9) conversion of the Trade Reporting Facility from a Delaware limited liability company into any other type of entity;
- (10) expansion of or modification to the business which results in the Trade Reporting Facility engaging in material business unrelated to the business of Non-System

Trading;

(11) changing the number of Directors on or composition of the Board; and

(12) adopting or amending policies regarding access and credit matters affecting the Trade Reporting Facility.

In addition, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.

Either Member may dissolve the Trade Reporting Facility LLC by providing to the other Member prior written notice of at least one year. Neither Member may deliver such notice before the second anniversary of the effective date of the LLC Agreement. After notice, the Members must negotiate in good faith to (i) allow the Business Member to continue to operate the LLC under NASD's SRO registration, (ii) restructure the LLC to allow the Business Member to operate the facility under Nasdaq's SRO registration, or (iii) sell the LLC or the business of the LLC to the SRO Member based on an agreed valuation. If the parties cannot agree on any of (i), (ii) or (iii), the LLC Agreement provides in Section 20(b) a mechanism for an appraisal process.

Proposed Rules Relating to the Trade Reporting Facility

NASD also is proposing rules relating to the use and operation of the Trade Reporting Facility. Members now will have the option of trade reporting transactions executed otherwise than on an exchange either to the Trade Reporting Facility or the

ADF.¹¹ For purposes of these requirements, the proposed rule change would define the term “otherwise than on an exchange” to mean a trade effected by an NASD member in an exchange-listed security otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The proposed rule change replaces the existing Nasdaq trade reporting rules in the Rule 4000 and 6100 Series in their entirety with rules applicable to the Trade Reporting Facility.¹² However, the proposed rules relating to the Trade Reporting Facility track, with certain limited exceptions, the requirements and general organization of the current Nasdaq trade reporting rules.

The proposed rule change combines the trade reporting requirements in the current Rule 4630, 4640 and 4650 Series (Nasdaq National Market, Nasdaq SmallCap and Nasdaq Convertible Debt Securities, respectively) into one rule series (proposed Rule 4630 Series), which then applies the proposed trade reporting requirements uniformly to all securities listed on Nasdaq. Because no quoting or issuer listing and qualifications activities will occur on or through the Trade Reporting Facility, all rules in the current Rule 4000 Series pertaining to such activities have not been included. In addition, the

¹¹ NASD will have an integrated audit trail of Trade Reporting Facility and ADF transactions and will have integrated surveillance capabilities.

¹² The clearing and comparison requirements in the Rule 6100 Series apply both to the Trade Reporting Facility and the NASD system that will be used for purposes of transaction reporting of OTC equity securities and DPPs.

current rule relating to customer confirmations for transactions in Nasdaq SmallCap securities (Rule 4643) has not been included because it is duplicative of SEC Rule 10b-10. Finally, the proposed rule change does not include rules relating to the risk management functionality currently provided through Nasdaq's ACT, as that service will not be provided through the Trade Reporting Facility.

As a result of these rule deletions, there are several gaps in the numbering of proposed rules (e.g, Rule 4200 is followed by Rule 4616). However, NASD believes it is preferable at this time to have these "gaps in numbering" to maintain consistency with the ADF trade reporting rules and to retain continuity with respect to prior guidance that has been disseminated relating to Nasdaq trade reporting rules. In this regard, NASD intends to interpret and apply the Trade Reporting Facility rules in the same manner in which the Nasdaq trade reporting rules currently are interpreted and applied.

In addition, NASD is proposing Rule 4633, which would give NASD the authority to halt trading otherwise than on an exchange reported to the Trade Reporting Facility. The proposed trading halt rule would impose mandatory trade halts when a primary market halts for certain defined regulatory reasons and grants NASD discretion to halt when there is extraordinary market activity in a security or the primary market halts for operational reasons. The proposal also provides NASD the authority to halt trading in the event that the facility cannot transmit real-time trade reporting information to the SIP. NASD believes it must have this authority to ensure that necessary and reliable information will be disseminated from the Trade Reporting Facility to the marketplace. However, the proposal would not necessarily restrict, in the event of a halt

due to operational problems limited only to the Trade Reporting Facility, continued trading otherwise than on an exchange outside of the Trade Reporting Facility, for example, through the ADF. This is similar in application to the ADF trading halt rule.¹³

NASD also is proposing a new Rule 5000 Series relating to trading otherwise than on an exchange. In the new Rule 5000 Series, NASD is proposing rules that will apply uniformly to trading in the ADF and the Trade Reporting Facility.¹⁴ First, proposed Rule 5000 provides that members are required to report transactions effected otherwise than on or through a national securities exchange to NASD through either the Trade Reporting Facility, pursuant to the Rule 4000 and 6000 Series, or the ADF, pursuant to the Rule 4000A and 6000A Series.

Second, NASD is proposing to renumber current Rule 3350 (the “Short Sale Rule”) as Rule 5100 and apply its requirements to transactions reported to either the ADF or the Trade Reporting Facility. Similar to the current application of Rule 3350 to trades reported to the ADF, the proposed rule change would require members to comply with the Short Sale Rule based on the national best bid. In all other respects, the Short Sale Rule would be consistent with the current short sale rule, including an exemption for registered market makers engaged in bona fide market making activity. The proposed rule change also clarifies that the term “customer” as used in the Short Sale Rule applies

¹³ As such, under the proposal, Rule 3340 would not prohibit a member from quoting or trading through another market if NASD closes trading pursuant to its authority under proposed Rule 4633(a)(3) or Rule 4120A(a)(3).

¹⁴ Rules that previously resided in the Rule 5000 Series, and have not otherwise been deleted, have been moved.

to non-member broker-dealers and makes other conforming changes in light of the SEC's adoption of Regulation SHO.

Finally, NASD is proposing Rule 5200 that would prohibit members from executing a transaction otherwise than on an exchange 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. This is similar to the requirement currently in Rule 6440(g), applicable to OTC transactions in exchange-listed securities.

Based on discussions with SEC staff, NASD also is noting that it intends to work with the appropriate parties to ensure that Trade Reporting Facility and ADF transactions are disseminated to the media with a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the Nasdaq Stock Market.

This rule proposal does not include any proposed fees or assessments specifically related to the Trade Reporting Facility. Fees or assessments with respect to the Trade Reporting Facility will be the subject of a future submission with the SEC.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. NASD believes that the proposed rule change will provide an effective mechanism and

regulatory framework for quoting and trading activities otherwise than on an exchange upon Nasdaq's separation from NASD.

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

The proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on this proposed rule change 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.

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

Not applicable.

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. Limited Liability Company Agreement of The Trade Reporting Facility LLC

Exhibit 5. Revised full text of the rule change marked to show additions to and deletions from current rule language.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-087)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc. to Reflect Nasdaq's Separation from NASD Upon Nasdaq's Anticipated Approval as a National Securities Exchange

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 the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), NASD By-Laws, NASD Regulation By-Laws, NASD Dispute Resolution By-Laws, and NASD rules to reflect Nasdaq's separation from NASD upon Nasdaq's anticipated approval as a national securities exchange, to make certain changes to the rules that govern quoting and trading through the NASD Alternative Display Facility ("ADF") and to establish rules for the trade

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

reporting of transactions otherwise than on an exchange through the new Trade Reporting Facility.³

The text of the proposed rule change is attached as Exhibit 5 to this Rule Filing. Proposed new language is underlined; proposed deletions are in brackets. All NASD rules that do not have rule text changes specified in Exhibit 5 remain unchanged and effective for all NASD members.

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 purpose of this proposed rule change is threefold: (1) to amend NASD rules to reflect the anticipated approval of Nasdaq as a national securities exchange⁴ and its resultant separation from NASD; (2) to make certain clarifying and conforming changes to the rules governing quoting and trading through the ADF; and (3) to establish rules for

³ The facility has been named the "Trade Reporting Facility" for purposes of this proposed rule change. The official name of the entity, however, has not yet been determined.

⁴ Securities Exchange Act Release No. 44396 (June 7, 2001), 66 Fed. Reg. 31952 (June 13, 2001) (File No. 10-131).

the trade reporting of transactions otherwise than on an exchange through the Trade Reporting Facility.⁵

Proposed Changes Relating to the Separation of Nasdaq

In 2000, NASD began restructuring its relationship with Nasdaq, which operates as an independent, for-profit company. As the result of a two-phase private placement of Nasdaq shares, a public offering recently completed in January 2005 and other dispositions of NASD shares, NASD's common stock ownership interest in Nasdaq has been reduced to a minority interest. Before Nasdaq can fully separate from NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has submitted drafts of proposed additional amendments to its Form 1 previously filed with the SEC requesting exchange registration. NASD continues to maintain greater than 50% of the voting control through its ownership of one outstanding share of Series B Preferred Stock until exchange registration is granted. Once Nasdaq obtains exchange registration, the share of Series B Preferred Stock will automatically lose its voting rights and will be redeemed by Nasdaq for \$1.00.

⁵ On December 7, 2001, NASD filed with the Commission SR-NASD-2001-90, a proposed rule change to amend NASD rules to reflect Nasdaq's separation from NASD upon its approval as a national securities exchange and to establish rules governing trading otherwise than on an exchange, including transactions effected through the ADF. On July 24, 2002, the Commission approved SR-NASD 2002-97, which authorized NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR-NASD-2001-90. *See* Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). NASD subsequently filed for immediate effectiveness proposed rule changes to extend the pilot until July 26, 2005. *See* Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003); Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004); and Exchange Act Release No. 50601 (October 28, 2004), 69 FR 64611 (November 5, 2004). NASD intends to withdraw SR-NASD-2001-90, and this proposed rule change is intended to replace and update that rule filing.

Thus, upon Nasdaq's registration as a national securities exchange, Nasdaq and NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. To effectuate that change, NASD must modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this separation of Nasdaq from NASD. These changes include removing references in the Delegation Plan to Nasdaq as a subsidiary and delegation of authority to Nasdaq; revising the NASD By-Laws, NASD Regulation, Inc. By-Laws and NASD Dispute Resolution, Inc. By-Laws to remove references to Nasdaq as a subsidiary of NASD; deleting Nasdaq-specific rules, such as listing and qualification requirements; replacing references to "Nasdaq" with "NASD" or "exchange," as applicable; and renaming and renumbering certain rules.⁶ Provided below are descriptions of the more significant proposed rule changes to reflect Nasdaq's separation from NASD.

Deleted Rules

The following rules have been deleted by NASD in their entirety because they either relate exclusively to participation in, and operation of, the Nasdaq Stock Market or will no longer be applicable upon the separation of Nasdaq from NASD: Rules 2852, 2854 and 2870 through 2885 related to Index Warrants listed on Nasdaq; Rules 5100 through 5133 and Rule 8212 related to the Nasdaq International Service; the Rule 5200 Series related to Intermarket Trading System/Computer Assisted Execution System (ITS/CAES);⁷ the Rule 6300 Series related to the Consolidated Quotations Service

⁶ This proposed rule change also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

⁷ NASD is considering the appropriate quoting and trading structure and rules that will be applicable to exchange-listed securities other than Nasdaq securities. Its

(CQS);⁸ the Rule 6400 Series relating to reporting transactions in exchange-listed securities;⁹ the Rule 6800 Series related to the Mutual Fund Quotation Service; and Rule 11890 related to Clearly Erroneous Transactions.

Rule 2840 Series Related to Trading in Index Warrants

The proposed rule change would delete language in the Rule 2840 Series related to index warrants listed on the Nasdaq Stock Market. The existing rule series was promulgated because Nasdaq intended to list such index warrants. The remainder of Rule 2840 Series remains unchanged, as it has continued applicability to NASD members that are not also members of an exchange on which they trade index warrants.

Rules 2850 through 2885 Related to Position Limits and Options Trading

To reflect Nasdaq's separation from NASD, the proposed rule change deletes from Rules 2850 through 2885 all language related to position limits and transactions in index warrants and options traded on Nasdaq. However, the rule change retains all provisions related to options trading in the listed and over-the-counter ("OTC") markets.

Rule 5300 Series Related to PORTAL Securities

The current Rule 5300 Series provides qualification and transaction reporting requirements relating to PORTAL Securities, which are foreign and domestic securities that are eligible for resale under SEC Rule 144A. The proposed rule change deletes the PORTAL requirements relating to the qualification or designation of PORTAL

current intention is to permit quoting and trade reporting of these securities through the ADF and to permit trade reporting through the Trade Reporting Facility. Accordingly, proposed changes relating to quoting and trading in these securities will be addressed in a future submission with the SEC.

⁸ Id.

⁹ Id.

securities, as that function will be performed by Nasdaq. Transactions in PORTAL securities, however, will be reported to NASD; therefore, the proposed rule change retains those rules and has relocated them to the Rule 6700 Series.

Rules 6500 through 6700 Series Related to OTC Equity Securities

The proposed rule change would combine the existing Rule 6600 and 6700 Series into a single Rule 6600 Series that governs transactions in “OTC equity securities,” as that term is defined in the rules. The proposed combination is intended to eliminate redundancies in the existing rules, while maintaining all of the regulatory requirements for trading and reporting transactions in such securities.

The proposed rule change also includes separate definitions for a “non-exchange listed security” and “OTC Equity Security,” with the latter including certain exchange-listed securities that do not otherwise qualify for real-time reporting. NASD believes this is necessary given that the trade reporting obligations under the Rule 6600 Series apply to certain exchange-listed securities that do not otherwise qualify for real-time trade reporting, while other NASD requirements, such as current Rule 6740, do not apply to such securities. In addition, because NASD will continue to operate the OTC Bulletin Board, the proposed rule change retains the Rule 6500 Series. Throughout these rules, references to Nasdaq and Nasdaq systems have been replaced with NASD, NASD systems or the OTC Reporting Facility¹⁰ as appropriate.

Rule 6900 Series Related to Direct Participation Programs (DPPs)

The Rule 6900 Series governs trade reporting of secondary market transactions by

¹⁰ The service by which members can trade report OTC equity securities has been named the “OTC Reporting Facility” for purposes of this proposed rule change. The official name of that system, however, has not yet been determined.

members in DPP securities other than transactions executed on a national securities exchange. The proposed rule change amends the Rule 6900 Series to reflect the fact that, upon the separation of Nasdaq and NASD, DPPs will no longer be reported to the Nasdaq Market Center, but will be reported to NASD.

Rule 6950 Series Related to Order Audit Trail System (OATS) Requirements

Upon Nasdaq's registration as an exchange, orders routed by members to Nasdaq will be subject to the OATS order transmittal requirements in Rule 6954(c)(6), relating to routes to non-members, including national securities exchanges. To ensure that NASD continues to receive from its members the same OATS data and linkage information that it receives today, the proposed rule change amends Rule 6954(c)(6) to require that members record the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable. As a result, it is our understanding that Nasdaq's exchange rules will require that orders transmitted to the Nasdaq Market Center continue to provide a routed order identifier. As such, the proposed rule change would require that members record that same routed order identifier in their transmittal reports, as they do today.

The proposed rule change also clarifies existing requirements related to routed order identifiers, specifically that members are permitted to use a routed order identifier that is different from the order identifier used for order origination purposes and that a member transmitting an order to another member must provide the routed order identifier to the member receiving the order.

Rule 9700 Series Related to Grievances Concerning Automated Systems

NASD is proposing to delete in its entirety the Rule 9700 Series, which sets forth

procedures to address unspecified general grievances related to any automated quotation, execution or communication system operated by NASD or Nasdaq. Several of the provisions relate to the authority of the Nasdaq Listing and Review Council, which no longer will be part of NASD upon Nasdaq exchange registration. Moreover, this rule series is very general in nature, as it ostensibly is a “catch-all” for all potential grievances not otherwise provided for in NASD rules, including the Code of Procedure (Rule 9000 Series) and the Uniform Practice Code (Rule 11000 Series). NASD believes that whatever residual application this rule series may have served at some point, it has since been superceded by additional rules that provide redress for specific grievances, such as denial of access to services under Rule 9555 and denial of access complaints related to the ADF under Rule 4400A.

Proposed Changes Related to the Alternative Display Facility

The ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission’s SuperMontage Approval Order¹¹ and in conjunction with Nasdaq’s anticipated registration as a national securities exchange. The ADF, which currently is operating on a pilot basis, provides ADF market participants (market makers and ECNs) 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

¹¹ Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR-NASD-99-53).

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.

NASD is proposing several clarifying and conforming changes to the ADF rules including: (1) clarification that certain ADF requirements apply not only to Registered Reporting ADF market makers, but to Registered Reporting ADF ECNs as well; (2) amendments to the ADF trade reporting requirements to make them more consistent with current Nasdaq trade reporting rules, including requiring that execution time be included in all ADF trade reports; (3) clarification that all applicable trade modifiers must be included in “as/of” trades; (4) amendments to the trade halt rule to include halt authority if there is extraordinary market activity in a security; and (5) deletion of the provisions in the ADF rules relating to passive market making, since passive market making will not be available on the ADF.

Proposed Changes Related to the Trade Reporting Facility

Establishment of the Trade Reporting Facility

NASD is proposing to establish the Trade Reporting Facility, which will provide members another mechanism for reporting transactions effected otherwise than on an exchange. In this regard, Nasdaq and NASD propose to enter into a Limited Liability Company Agreement of The Trade Reporting Facility LLC between Nasdaq and NASD (“the LLC Agreement”), a copy of which is attached hereto as an Exhibit. The Trade Reporting Facility will be a facility of NASD and subject to NASD’s registration as a national securities association. Trades by members in Nasdaq-listed and other exchange-

listed securities¹² executed otherwise than on an exchange (“Non-System Trading”) may be reported to the Trade Reporting Facility. NASD will continue to have regulatory responsibility for the Non-System Trading reported to the Trade Reporting Facility, while Nasdaq agrees to pay the cost of regulation and will provide systems to enable broker-dealers to report trades to the Trade Reporting Facility. Nasdaq will be entitled to the economic interests derived from the Non-System Trading reported to the Trade Reporting Facility. This proposed structure will be in place for at least three years.

Pursuant to the LLC Agreement, NASD, as the “SRO Member” of the Trade Reporting Facility, will have the sole regulatory responsibility for the activities of the Trade Reporting Facility. The SRO Member will perform SRO Responsibilities including, but not limited to,

(1) adoption, amendment and interpretation of policies arising out of and regarding the operation of the facilities of the SRO, or regarding the meaning, administration, or enforcement of an existing rule of the SRO, including any generally applicable exemption from such a rule;

(2) approval of rule filings of the SRO prior to filing with the SEC;

(3) regulation of the Trade Reporting Facility’s activities, including the right to review and approve the regulatory budget for the Trade Reporting Facility;

(4) securities regulation and any other matter implicating SRO Responsibilities; and

(5) real-time market surveillance (Nasdaq Marketwatch).

Nasdaq, as the “Business Member,” will be primarily responsible for the

¹² See supra note 5.

management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Under Section 9(d) of the LLC Agreement, each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority.

The Trade Reporting Facility will be managed by or under the direction of a Board of Directors to be established by the parties. NASD will have the right to designate at least one Director, the SRO Member Director, who may be a member of NASD's Board of Governors or an officer or employee of NASD designated by the NASD Board of Governors. The SRO Member Director will have veto power over all major actions of the LLC Board. Major actions are defined in Section 10(e) of the LLC Agreement to include:

- (1) approving pricing decisions that are subject to the SEC filing process;
- (2) approving contracts between the Trade Reporting Facility and the Business Member, any of its affiliates, directors, officers or employees;
- (3) approving Director compensation;
- (4) selling, licensing, leasing or otherwise transferring material assets used in the operation of the Trade Reporting Facility's business outside of the ordinary course of business with an aggregate value in excess of \$3 million;
- (5) approving or undertaking a merger, consolidation or reorganization of the Trade Reporting Facility with any other entity;
- (6) entering into any partnership, joint venture or other similar joint business undertaking;

(7) making any fundamental change in the market structure of the Trade Reporting Facility from that contemplated by the Members as of the date of the LLC Agreement;

(8) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 20 of the LLC Agreement;

(9) conversion of the Trade Reporting Facility from a Delaware limited liability company into any other type of entity;

(10) expansion of or modification to the business which results in the Trade Reporting Facility engaging in material business unrelated to the business of Non-System Trading;

(11) changing the number of Directors on or composition of the Board; and

(12) adopting or amending policies regarding access and credit matters affecting the Trade Reporting Facility.

In addition, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.

Either Member may dissolve the Trade Reporting Facility LLC by providing to the other Member prior written notice of at least one year. Neither Member may deliver such notice before the second anniversary of the effective date of the LLC Agreement. After notice, the Members must negotiate in good faith to (i) allow the Business Member to continue to operate the LLC under NASD's SRO registration, (ii) restructure the LLC to allow the Business Member to operate the facility under Nasdaq's SRO registration, or

(iii) sell the LLC or the business of the LLC to the SRO Member based on an agreed valuation. If the parties cannot agree on any of (i), (ii) or (iii), the LLC Agreement provides in Section 20(b) a mechanism for an appraisal process.

Proposed Rules Relating to the Trade Reporting Facility

NASD also is proposing rules relating to the use and operation of the Trade Reporting Facility. Members now will have the option of trade reporting transactions executed otherwise than on an exchange either to the Trade Reporting Facility or the ADF.¹³ For purposes of these requirements, the proposed rule change would define the term “otherwise than on an exchange” to mean a trade effected by an NASD member in an exchange-listed security otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The proposed rule change replaces the existing Nasdaq trade reporting rules in the Rule 4000 and 6100 Series in their entirety with rules applicable to the Trade Reporting Facility.¹⁴ However, the proposed rules relating to the Trade Reporting Facility track, with certain limited exceptions, the requirements and general organization of the current Nasdaq trade reporting rules.

The proposed rule change combines the trade reporting requirements in the current Rule 4630, 4640 and 4650 Series (Nasdaq National Market, Nasdaq SmallCap

¹³ NASD will have an integrated audit trail of Trade Reporting Facility and ADF transactions and will have integrated surveillance capabilities.

¹⁴ The clearing and comparison requirements in the Rule 6100 Series apply both to the Trade Reporting Facility and the NASD system that will be used for purposes of transaction reporting of OTC equity securities and DPPs.

and Nasdaq Convertible Debt Securities, respectively) into one rule series (proposed Rule 4630 Series), which then applies the proposed trade reporting requirements uniformly to all securities listed on Nasdaq. Because no quoting or issuer listing and qualifications activities will occur on or through the Trade Reporting Facility, all rules in the current Rule 4000 Series pertaining to such activities have not been included. In addition, the current rule relating to customer confirmations for transactions in Nasdaq SmallCap securities (Rule 4643) has not been included because it is duplicative of SEC Rule 10b-10. Finally, the proposed rule change does not include rules relating to the risk management functionality currently provided through Nasdaq's ACT, as that service will not be provided through the Trade Reporting Facility.

As a result of these rule deletions, there are several gaps in the numbering of proposed rules (e.g, Rule 4200 is followed by Rule 4616). However, NASD believes it is preferable at this time to have these "gaps in numbering" to maintain consistency with the ADF trade reporting rules and to retain continuity with respect to prior guidance that has been disseminated relating to Nasdaq trade reporting rules. In this regard, NASD intends to interpret and apply the Trade Reporting Facility rules in the same manner in which the Nasdaq trade reporting rules currently are interpreted and applied.

In addition, NASD is proposing Rule 4633, which would give NASD the authority to halt trading otherwise than on an exchange reported to the Trade Reporting Facility. The proposed trading halt rule would impose mandatory trade halts when a primary market halts for certain defined regulatory reasons and grants NASD discretion to halt when there is extraordinary market activity in a security or the primary market halts for operational reasons. The proposal also provides NASD the authority to halt

trading in the event that the facility cannot transmit real-time trade reporting information to the SIP. NASD believes it must have this authority to ensure that necessary and reliable information will be disseminated from the Trade Reporting Facility to the marketplace. However, the proposal would not necessarily restrict, in the event of a halt due to operational problems limited only to the Trade Reporting Facility, continued trading otherwise than on an exchange outside of the Trade Reporting Facility, for example, through the ADF. This is similar in application to the ADF trading halt rule.¹⁵

NASD also is proposing a new Rule 5000 Series relating to trading otherwise than on an exchange. In the new Rule 5000 Series, NASD is proposing rules that will apply uniformly to trading in the ADF and the Trade Reporting Facility.¹⁶ First, proposed Rule 5000 provides that members are required to report transactions effected otherwise than on or through a national securities exchange to NASD through either the Trade Reporting Facility, pursuant to the Rule 4000 and 6000 Series, or the ADF, pursuant to the Rule 4000A and 6000A Series.

Second, NASD is proposing to renumber current Rule 3350 (the “Short Sale Rule”) as Rule 5100 and apply its requirements to transactions reported to either the ADF or the Trade Reporting Facility. Similar to the current application of Rule 3350 to trades reported to the ADF, the proposed rule change would require members to comply with the Short Sale Rule based on the national best bid. In all other respects, the Short Sale Rule would be consistent with the current short sale rule, including an exemption for

¹⁵ As such, under the proposal, Rule 3340 would not prohibit a member from quoting or trading through another market if NASD closes trading pursuant to its authority under proposed Rule 4633(a)(3) or Rule 4120A(a)(3).

¹⁶ Rules that previously resided in the Rule 5000 Series, and have not otherwise been deleted, have been moved.

registered market makers engaged in bona fide market making activity. The proposed rule change also clarifies that the term “customer” as used in the Short Sale Rule applies to non-member broker-dealers and makes other conforming changes in light of the SEC’s adoption of Regulation SHO.

Finally, NASD is proposing Rule 5200 that would prohibit members from executing a transaction otherwise than on an exchange 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. This is similar to the requirement currently in Rule 6440(g), applicable to OTC transactions in exchange-listed securities.

Based on discussions with SEC staff, NASD also is noting that it intends to work with the appropriate parties to ensure that Trade Reporting Facility and ADF transactions are disseminated to the media with a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the Nasdaq Stock Market.

This rule proposal does not include any proposed fees or assessments specifically related to the Trade Reporting Facility. Fees or assessments with respect to the Trade Reporting Facility will be the subject of a future submission with the SEC.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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.

NASD believes that the proposed rule change will provide an effective mechanism and regulatory framework for quoting and trading activities otherwise than on an exchange upon Nasdaq's separation from NASD.

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

The proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on this proposed rule change 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-2005-087 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-087. 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, 100 F Street, NE, Washington, DC 20549. 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 the File Number SR-NASD-2005-087 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.¹⁷

Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

**LIMITED LIABILITY COMPANY AGREEMENT
OF
[THE TRADE REPORTING FACILITY LLC]**

This Limited Liability Company Agreement (together with the schedules attached hereto, this “Agreement”) of [The Trade Reporting Facility LLC] (the “Company”), dated as of [____], 2005, is entered into by and between The Nasdaq Stock Market, Inc. (the “Business Member”) and the National Association of Securities Dealers, Inc. (the “SRO Member” or “NASD” and, together with the Business Member, the “Members”, and each, a “Member”). Capitalized terms used herein and not otherwise defined have the meanings set forth on Schedule A hereto.

The Members, by execution of this Agreement, (i) hereby form and continue the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the “Act”), and (ii) hereby agree as follows:

1. Name.

The name of the limited liability company formed hereby is [The Trade Reporting Facility LLC].

2. Principal Business Office.

The principal business office of the Company shall be located at such location as may hereafter be determined by the Members.

3. Registered Office.

The address of the registered office of the Company in the State of Delaware is [ADDRESS TO COME].

4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is [ADDRESS TO COME].

5. Members.

The name and the mailing address of the Members are set forth on Schedule B, attached hereto.

6. Certificates.

[NAME TO COME] as an “authorized person” within the meaning of the Act, shall execute, deliver and file the Certificate of Formation with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” shall cease, and each Member thereupon shall become a designated “authorized person” and each Member shall continue as a designated “authorized person” within the meaning of the Act. The Members or an Officer shall execute, deliver and file any other certificates (and any amendments thereto and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, to operate a facility for Non-System Trading and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient or appropriate in connection therewith as the Members may determine. The Company may not undertake material business activities unrelated to the business of Non-System Trading without obtaining the approval required by Section 10(e).

8. Powers.

The Company (a) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (b) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

9. Roles of Members.

(a) *SRO Member.* The SRO Member shall have the sole regulatory responsibility for the activities of the Company. Pursuant to the Statement of Work, the SRO Member shall perform for the Company SRO Responsibilities including, but not limited to, those relating to:

- (i) adoption, amendment and interpretation of policies arising out of and regarding:
 - (A) any material aspect of the operation of the facilities of the SRO;
 - (B) any statement made generally available to membership of, to all participants in, or to Persons having or seeking access to facilities of the SRO, or to a group or category of specified Persons, that establishes or changes any standard, limit, or guideline with respect to (1) the rights, obligations, or privileges of specified Persons or, Persons associated with specific Persons, or (2) the meaning, administration, or enforcement of an existing rule of the SRO, including any generally applicable exemption from such a rule;
- (ii) approval of rule filings of the SRO prior to filing with the SEC;

(iii) regulation of the Company's activities, including the right to review and approve the regulatory budget for the Company;

(iv) securities regulation and any other matter implicating SRO Responsibilities; and

(v) real-time market surveillance (Nasdaq Marketwatch);

(b) *Business Member*. The Business Member shall be primarily responsible for the management of the Company's business affairs. Pursuant to the Facility Services Agreement, the Business Member shall provide those services relating to:

(i) matters regarding business policy;

(ii) approval of business decisions, including budgets, capital expenditures, technology changes, marketing and product changes;

(iii) identification and creation of officer positions necessary to manage the Company pursuant to Section 11 hereof and appointment or termination of the officers of the Company;

(iv) management and control of day-to-day operations, including business management, technology operations and enhancements, accounting, finance, human resources, pricing recommendations and market operations;

(v) incurrence, issuance, assumption, guarantee or refinancing of any debt of the Company;

(vi) acquisition of assets consistent with the purpose set forth in Section 7;

(vii) engaging or terminating an independent auditor;

(viii) declaration and payment of any distributions;

(ix) commencement or settlement of litigation not directly related to the SRO Responsibilities;

(x) internal audits, including Sarbanes-Oxley 404 compliance efforts and business risk review; and

(xi) other operations of the Company.

(c) *Consultation with Business Member*. Notwithstanding anything to the contrary contained in this Section 9 or elsewhere in this Agreement, the SRO Member shall endeavor to carry out its material regulatory obligations, pursuant to Section 9(a), in consultation with the Business Member. Such consultation shall, to the extent reasonably practicable, include providing the Business Member with the opportunity to review and comment upon in advance nonroutine information relating to the Company that appears in filings, statements or

applications submitted to the SEC or another governmental or regulatory authority on behalf of the Company that are material to ensuring that the Company complies with applicable federal securities laws and keeping the Company and the Business Member apprised, in a regular and timely manner, of nonroutine notices or orders relating to the Company received by the SRO Member from the SEC or another governmental or regulatory authority. Nothing in this Section 9(c) shall be construed to allow the Business Member to require the SRO Member to act or fail to act in a manner that the SRO Member believes to be inconsistent with its regulatory obligations.

(d) *Compliance with Securities Laws.* Each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC pursuant to its regulatory authority and the provisions of this Agreement.

(e) *Other Facilities.* The SRO Member covenants and agrees if it enters into an agreement with another party regarding a facility for Non-System Trading the terms and conditions shall be no more favorable to such other party than the terms and conditions of this Agreement.

10. Board of Directors.

(a) *Number and Composition.* The Company shall be managed by or under the direction of the board of directors (the “Board of Directors” or “Board”), which shall be established by the Members. The Board shall initially be comprised of three (3) Directors. The Business Member shall be initially entitled to designate two (2) Directors, each of whom must be a director, officer or employee of the Business Member. The SRO Member shall be initially entitled to designate one (1) Director (the “SRO Member Director”) who shall be a member of the SRO Member’s Board of Governors or an officer or employee of the SRO Member designated by the SRO Member’s Board of Governors. Each Director elected, designated or appointed to the Board shall hold office until a successor is elected and qualified or until such Director’s earlier death, resignation or removal. Each Director shall execute and deliver a Management Agreement or other instrument pursuant to which such Director shall accept its appointment and duties as a Director and agree to be bound by the terms of this Agreement. Subject to Section 10(e) of this Agreement, the Board may change the number of the Directors and the composition of the Board from time to time at its discretion; provided, however, that the Board shall, at all times, include at least one SRO Member Director. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be a Director.

(b) *Authority and Conduct.* The Board shall have the authority to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 10(e), the Board shall have the authority to bind the Company. Each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the SRO Member pursuant to their regulatory authority and the provisions of this Agreement. Furthermore, in discharging his or her responsibilities as a member of the Board, each Director shall take into consideration whether his or her actions as a Director would cause the Company

or either Member to engage in conduct that would be consistent with the purposes of the Exchange Act.

(c) *Meetings.* The Board may hold meetings, both regular and special, within or outside the State of Delaware. Regular or special meetings of the Board may be held at such time and at such place as shall from time to time be determined by the Board. Regular meetings of the Board may be held without notice. The President or other Officer of the Company as designated by the Board may call special meetings of the Board on not less than one day's notice to each Director of the Board by telephone, facsimile, mail, telegram or any other means of communication, and special meetings of the Board shall be called by the President or other Officer of the Company as designated by the Board in like manner and with like notice upon the written request of any one or more of the Directors of the Board.

(d) *Quorum; Acts of the Board.* At all meetings of the Board, a majority of the Directors of the Board shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors of the Board present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors of the Board present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. Notwithstanding the foregoing, any act of the Board shall be subject to the limitations set forth in Section 10(e).

(e) *Special Voting Requirements; Major Actions.* Notwithstanding the provisions set forth in Section 10(d) regarding voting requirements, no action with respect to any Major Action (as defined below), shall be effective unless approved by consent of the SRO Member Director. Additionally, unless approved by the SRO Member Director, neither Member on behalf of the Company shall enter into or permit the Company to enter into any Major Action. For purposes of this Agreement, "Major Action" means any of the following:

- (i) approving pricing decisions that are subject to the SEC filing process;
- (ii) approving contracts between the Company and the Business Member, any of its Affiliates, directors, officers or employees;
- (iii) approving Director compensation;
- (iv) selling, licensing, leasing or otherwise transferring material assets used in the operation of the Company's business outside of the ordinary course of business with an aggregate value in excess of \$3 million;
- (v) approving or undertaking a merger, consolidation or reorganization of the Company with any other entity;

(vi) entering into any partnership, joint venture or other similar joint business undertaking;

(vii) making any fundamental change in the market structure of the Company from that contemplated by the Members as of the date hereof;

(viii) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 20;

(ix) conversion of the Company from a Delaware limited liability company into any other type of entity;

(x) expansion of or modification to the business which results in the Company engaging in material business unrelated to the business of Non-System Trading;

(xi) changing the number of Directors on or composition of the Board; and

(xii) adopting or amending policies regarding access and credit matters affecting the Company.

(f) *Electronic Communications.* Directors on the Board, or any committee of the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(g) *Committees of Directors.* The Board may, by resolution passed by the unanimous vote of the Board, designate one or more committees thereof, each committee to consist of one or more of the Directors. The Board may designate one or more Directors as alternate members of any committee thereof, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board designating such committee, shall have and may exercise all the powers and authority of the Board in the management of the affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. Notwithstanding the foregoing, committees of the Board shall not have any power or authority to approve or transact any Major Action.

(h) *Compensation of Directors; Expenses.* Subject to Section 10(e) hereof, the Board shall have the authority to fix the compensation of the Company's Directors. The Directors may be paid their expenses, if any, associated with attendance at Board meetings,

which may be a fixed sum for attendance at each such meeting or a stated Director salary. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) *Removal of Directors.* Unless otherwise restricted by law and notwithstanding any other provision of this Agreement, any Director may be removed, with or without cause, by the Member that had appointed such Director, and any vacancy caused by any such removal may be filled by action of such Member.

(j) *Directors as Agents.* To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Except as provided in this Agreement or pursuant to an authorization from the Board, an individual Director may not bind the Company.

(k) *Duties of Directors.* Except as provided in this Agreement, in exercising their rights and performing their duties under this Agreement, the Directors shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware.

11. Officers.

The Officers of the Company shall be appointed by the Business Member and approved by a majority of the Board and shall consist of at least a President, Secretary and Treasurer. In addition, the Business Member may appoint subject to the Board's approval one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. Any Officer or Director of the Company may also serve as an officer or director of the Business Member or the SRO Member. The Business Member may appoint subject to the Board's approval such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company appointed by the Business Member subject to the Board's approval shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Business Member subject to the Board's approval. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be an Officer.

(a) *President.* The President shall be the chief executive officer of the Company, shall preside at all meetings of the Members, if any, and of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Company's Board are carried into effect. The President shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed; (ii) where signing and execution

thereof shall be expressly delegated by the Company's Directors to some other Officer or agent of the Company; and (iii) as otherwise permitted in Section 11(b).

(b) *Vice President.* In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Directors, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(c) *Secretary and Assistant Secretary.* The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and all meetings of the Members, if any, and record all the proceedings of the meetings of the Board and the Members in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Members, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) *Treasurer and Assistant Treasurer.* The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and to the Board, at their regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and, the actions of the Officers taken in accordance with such powers shall bind the Company.

(f) *Duties of Officers.* Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company and neither the SRO Member, Business Member nor any Director of the Company shall be obligated personally for any debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company. Notwithstanding the foregoing, the Business Member shall ensure that the Company has funds sufficient to satisfy its regulatory obligations and shall guaranty the Company's payment obligations relating to the costs associated with those SRO Responsibilities performed for the Company pursuant to the Statement of Work.

13. Capital Contributions.

The Business Member shall contribute the property, rights and other assets and liabilities to the Company listed on Schedule B attached hereto. The SRO Member shall not make any capital contribution to the Company and shall have no claim to any assets, tangible or intangible, of the Company.

14. Additional Contributions.

The Members are not required to make any additional capital contributions to the Company. However, the Business Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Business Member makes an additional capital contribution to the Company, the Business Member shall revise Schedule B of this Agreement. The SRO Member may not make and shall not be required to make any capital contribution to the Company. The provisions of this Agreement, including this Section 14, are intended solely to benefit the Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and no Member shall have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Business Member.

16. Distributions.

Distributions shall be made to the Business Member at the times and in the aggregate amounts determined by the Business Member. Distributions shall not be made to the SRO Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

17. Books, Records and Jurisdiction.

(a) The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board in compliance with Section 17(a)(1) of the Exchange Act and the rules thereunder. Each Member and its duly authorized representatives and the SEC shall have the right to examine the Company books, records and documents during normal business hours. At the request of the SEC, the Company shall provide to the SEC copies of the Company books and the costs associated with such copies shall be borne by the Company. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from any Member information that the Board would otherwise be permitted to keep confidential from any Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Business Member. The Company's independent auditor shall be an independent public accounting firm selected by the Business Member.

(b) The Members acknowledge that to the extent directly related to the Company's activities, the books, records, premises, officers, directors, governors, agents and employees of the Members shall be deemed to be the books, records, premises, officers, directors, governors, agents and employees of NASD and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act.

(c) The Members and the officers, directors, governors, agents and employees of the Members irrevocably submit to the jurisdiction of the U.S. federal courts, SEC and NASD for the purpose of any suit, action or proceeding pursuant to U.S. federal securities laws, and the rules or regulations thereunder, arising from, or relating to, the Company's activities or Section 17(b) hereof (except that such jurisdictions shall include Delaware for any such matter relating to the organization or internal affairs of the Company, provided that such matter is not related to trading on, or the regulation of, the market operated by the Company), and hereby waive and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action or proceeding any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

(d) During the term of this Agreement, none of the Company, any Member or their respective Affiliates shall reveal to any Person any confidential or proprietary information or trade secrets of the Company or any of the Members or their respective Affiliates ("Confidential Information"); provided, however, that such Confidential Information may be disclosed (i) to any employee and subcontractor involved in the performance of this Agreement, (ii) to any Person who is a director, officer, employee of, or counsel or advisor to, the Company or any of the Members or any of their respective Affiliates, (iii) to any person who is an official or employee of, or counsel to, any regulatory body or agency having jurisdiction over the Company or its Affiliates, (iv) for the purpose of furthering the aims and interests of the Company as determined by its Board, or (v) pursuant to a subpoena or order issued by a court of competent jurisdiction or as otherwise required by law. The obligations of this Section 17(d) shall survive for a period of five years from termination of this Agreement.

(e) The Company and each Member shall cause its respective Affiliates, officers, directors, governors, employees, representatives and agents to comply with this Section 17.

18. Exculpation and Indemnification.

(a) To the fullest extent permitted by law, no Member, Officer, Director, employee or agent of the Company and no officer, director, governor, employee, representative, agent or Affiliate of any Member (collectively, the “Covered Persons”) shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person’s gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person’s gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 shall be provided out of and to the extent of Company assets only, and no Member shall have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to any Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person bound by this Agreement for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or

any other Covered Person. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

19. Assignment.

Neither Member may transfer or assign in whole or in part its limited liability company interest in the Company except (i) in the case of either Member, to an Affiliate of such Member, provided in the case of the SRO Member, that the Affiliate has proper authority to perform the SRO Responsibilities of the SRO Member.

20. Termination.

(a) Unless otherwise agreed in writing by the Members, the Company may be dissolved by either Member in accordance with this Section 20. Either Member may dissolve the Company by providing to the other Member prior written notice of at least one year, unless the Member revokes such notice prior to the expiration of the one-year period; provided, however, that neither Member may deliver such notice of dissolution to the other Member before the second anniversary of the effective date of this Agreement. Unless the notice is revoked prior to the date of dissolution or as otherwise agreed to by the Members, the Company shall dissolve in accordance with the terms of this Agreement one year from the date notice of such dissolution is received by the applicable Member or at such later time as expressly set forth in the notice (the “Dissolution Date”). If the SRO Member provides notice of dissolution pursuant to this Section 20 (the date of delivery by the SRO Member of such notice of dissolution is hereinafter referred to as the “Notice of Dissolution Delivery Date”), then the Members shall negotiate in good faith to: (i) allow the Business Member to continue to operate the Company or the business of the Company under the SRO Member’s SRO registration, (ii) restructure the Company so that the Business Member can operate the Company or the business of the Company under the Business Member’s SRO registration or (iii) sell the Company or the business of the Company to the SRO Member based on a valuation of the Company’s business and assets conducted in such manner as the parties may agree, and consideration for the sale may include a contract for the Business Member to provide services to the SRO Member relating to the operation of the Company and the business of the Company.

(b) In the event the parties have not agreed on any of (i), (ii) or (iii) of Section 20(a) by the date that is 60 days after the Notice of Dissolution Delivery Date (the “FMV Commencement Date”), the Members shall thereafter in good faith seek to agree on the Fair Market Value. If the Members cannot agree on the Fair Market Value within [30] days after the FMV Commencement Date, the Members shall cooperate in good faith to select an independent investment banking firm (an “Investment Bank”) of recognized international standing (the “Appraiser”) to determine the Fair Market Value. Any Investment Bank that has received an aggregate of [\$100,000] or more for services or otherwise from either Member during the three-year period prior to the Dissolution Date shall not be eligible to serve as the Appraiser. The fees and expenses of the Appraiser will be borne by the Members in equal amounts. Each Member

will share with the other Member any written information it provides to the Appraiser and will not communicate with the Appraiser, other than through such written information, without giving the other Member an opportunity to be present at any such communication. Within [90] days after the date on which the date the Appraiser has been selected, the Appraiser will determine the Fair Market Value and will notify the Members in writing of such determination (specifying the Fair Market Value and setting forth, in reasonable detail, the basis for such determination). The determination of Fair Market Value in accordance with this Section 20(b) will be final, binding and conclusive upon the Members. At a closing to occur on the date that is [10] business days following the determination of the Fair Market Value (whether by agreement of the Members or by determination of the Appraiser), or such other date as the Members shall mutually determine: (i) the SRO Member shall pay to the Business Member an amount equal to the Fair Market Value; (ii) the Business Member shall transfer to the SRO Member the Business Member's interest in the Company in its entirety; and (iii) the Notice of Dissolution shall be deemed revoked. Upon dissolution of the Company, except as may be prohibited by applicable law, the Business Member covenants and agrees that it will not apply to register as a Registered Securities Association. This covenant shall survive termination of this Agreement for a period of five years.

21. Dissolution and Winding Up.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) an action by either Member in accordance with and pursuant to Section 20 herein, (ii) the occurrence of any event which terminates the continued membership of the last remaining Member in the Company unless the Company is continued in a manner permitted by the Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) The bankruptcy (as defined in Section 18-101(1) of the Act) of any Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) In the event of dissolution, the Business Member shall be responsible for the winding up of the Company and the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company and, except as otherwise provided herein, this Agreement shall each terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Business Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

22. Waiver of Partition.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, the SRO Member hereby irrevocably waives any right or power that such

Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company.

23. Related Party Transactions.

Subject to Section 10(e) hereof, the Company may enter into transactions with it Members.

24. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

25. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

26. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

27. Amendments.

This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by both Members.

28. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

29. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail, or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address determined pursuant to Section 2, (b) in the case of a Member, to such Member at its address as listed on Schedule B attached hereto and (c) in the

case of either of the foregoing, at such other address as may be designated by written notice to the other party.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written herein.

THE NASDAQ STOCK MARKET, INC.

By: _____
Name:
Title:

NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC.

By: _____
Name:
Title:

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented from time to time.

“Appraiser” has the meaning set forth in Section 20(b) of this Agreement.

“Board” or “Board of Directors” has the meaning set forth in Section 10(a).

“Business Member” means The Nasdaq Stock Market, Inc., in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company as such pursuant to this Agreement.

“Certificate of Formation” means the Certificate of Formation of the Company to be filed with the Secretary of State of the State of Delaware on [_____], 200[___], as amended or amended and restated from time to time.

“Confidential Information” has the meaning set forth in Section 17(d) of this Agreement.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 18(a) of this Agreement.

“Directors” means the directors elected, designated or appointed to the Board from time to time by the Members. A Director is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

“Dissolution Date” has the meaning set forth in Section 20(a) of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Facility Services Agreement” means the Facility Services Agreement to be entered into between the Company and the Business Member or an Affiliate thereof, as such agreement may from time to time be amended.

“Fair Market Value” means the private market value that a willing Third Party would pay for the Business Member’s interest in the Company in an arms-length transaction taking into account the prospects and potential of the Company’s business operated as a going concern under a valid SRO registration.

“FMV Commencement Date” has the meaning set forth in Section 20(b) of this Agreement.

“Investment Bank” has the meaning set forth in Section 20(b) of this Agreement.

“Major Action” has the meaning set forth in Section 10(e) of this Agreement.

“Management Agreement” means the agreement of the Directors in substantially the form attached hereto as Schedule C.

“Member” has the meaning set forth in the preamble to this Agreement.

“NASD” has the meaning set forth in the preamble to this Agreement.

“Non-System Trading” means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to SEC Rule 240.11Aa3-1 or SEC Rule 242.601

“Notice of Dissolution Delivery Date” has the meaning set forth in Section 20(a) of this Agreement.

“Officer” means an officer of the Company described in Section 11. [The initial Officers are listed on Schedule D hereto].

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Registered Securities Association” means a “registered securities association” within the meaning of the Exchange Act.

“SEC” means the Securities and Exchange Commission.

“SRO” means a “self-regulatory organization” within the meaning of the Exchange Act.

“SRO Member” means the National Association of Securities Dealers, Inc, in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company pursuant to this Agreement.

“SRO Member Director” has the meaning set forth in Section 10(a) of this Agreement.

“SRO Responsibilities” means those duties or responsibilities of an SRO pursuant to the Exchange Act and the rules promulgated thereunder.

“Statement of Work” means the written statement to be delivered to the Company by the NASD or an Affiliate thereof setting forth the SRO Responsibilities that the NASD or an Affiliate thereof will perform for the Company.

“Third Party” means any person other than (i) the Company or any Affiliate thereof or (ii) either Member or any Affiliate thereof.

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Members

<u>Name</u>	<u>Mailing Address</u>	<u>Capital Contribution</u>
The Nasdaq Stock Market, Inc.	One Liberty Plaza New York, NY 10006	[TO COME]
National Association of Securities Dealers, Inc.	1735 K Street, N.W. Washington D.C. 20006	None

SCHEDULE C

Management Agreement

[_____] , 2005

[The Trade Reporting Facility LLC]
[ADDRESS]

Re: Management Agreement
[The Trade Reporting Facility LLC]

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned persons, who have been designated as directors of the Board of [The Trade Reporting Facility LLC], a Delaware limited liability company (the “Company”), in accordance with the Limited Liability Company Agreement of the Company, dated as of [_____] , 200[___], as it may be amended or restated from time to time (the “LLC Agreement”), hereby agree as follows:

1. Each of the undersigned accepts such person’s rights and authority as a Director (as defined in the LLC Agreement) of the Board of the Company under the LLC Agreement and agrees to perform and discharge such person’s duties and obligations as a Director of such Board under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such person’s successor as a Director is designated or until such person’s resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a “manager” of the Company within the meaning of the Delaware Limited Liability Company Act.

2. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

Name:

Name:

Name:

SCHEDULE D

Initial Officers of [The Trade Reporting Facility LLC]

Name

Title

[President]

[Vice President]

[Secretary]

[Treasurer]

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO SUBSIDIARIES

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the wholly-owned Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"), [The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"),] and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Governors, Directors and Committee Members — The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD and NASD Regulation [and Nasdaq], as applicable.

B. Functions and Authority of the NASD — The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A., III. A.,] and [V] IV.A., the NASD has

delegated certain authority and functions to its Subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Restated Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the Subsidiaries. In addition, the NASD expressly retains the following authority and functions:

1. through 3. No Change.

4. To review the rulemaking and disciplinary decisions of the Subsidiaries (See Sections II.B., III.B.,] and [V]IV.B. below).

5. through 10. No Change.

11. To take action ab initio in an area of responsibility delegated to NASD Regulation in Section II, [to Nasdaq in Section III,] or to NASD Dispute Resolution in Section [V]IV.

C. No Change.

D. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A., III.A.,] and [V]IV.A. below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are

officers, directors, employees, and agents of the NASD for purposes of the Act. [The books and records of Nasdaq shall be subject at all times to inspection and copying by NASD Regulation.]

II. NASD Regulation

A. Delegation of Functions and Authority:

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. No Change.

b. To determine Association policy, including developing and adopting necessary or appropriate rule changes, relating to the business and sales practices of NASD members and associated persons with respect to, but not limited to, (i) public and private sale or distribution of securities including underwriting arrangements and compensation, (ii) financial responsibility, (iii) qualifications for NASD membership and association with NASD members, (iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting members in general and securities [listed on The Nasdaq Stock Market and on other markets operated by The Nasdaq Stock Market] quoted or trade-reported through an NASD facility, (v) NASD member advertising practices, (vi) administration, interpretation, and enforcement of Association rules, (vii) administration and

enforcement of Municipal Securities Rulemaking Board ("MSRB") rules, the federal securities laws, and other laws, rules and regulations that the Association has the authority to administer or enforce, and (viii) standards of proof for violations and sanctions imposed on NASD members and associated persons in connection with disciplinary actions.

c. No Change.

d. To administer programs and systems for the surveillance and enforcement of NASD rules governing [NASD] members' conduct and trading activities [in The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, the third market for securities listed on a registered exchange, and the over-the-counter market].

e. through r. No Change.

s. To operate Stockwatch [in conjunction with Nasdaq] pursuant to Section [IV]III.

t. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded in the third market for securities listed on a registered exchange, and in the over-the-counter market, and (ii) establishing trading practices with respect to these securities.

2. No Change.

B. No Change.

C. Supplemental Delegation Regarding Committees

1. Market Regulation Committee

a. The Market Regulation Committee shall advise the NASD Regulation Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; advise the NASD Regulation Board in its administration of programs and systems for the surveillance and enforcement of rules governing NASD members' conduct and trading activities in [The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market] the third market for securities listed on a registered exchange, and the over-the-counter market; provide a pool of panelists for those hearing panels that the Chief Hearing Officer or his or her designee determines should include a member of the Market Regulation Committee pursuant to the Rules of the Association; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review and recommend to the National Adjudicatory Council changes to the Association's Sanction Guidelines.

b. through c. No Change.

2. [Operations] Uniform Practice Code Committee

a. The [Operations] Uniform Practice Code Committee shall have the following functions:

i. to issue interpretations or rulings with respect to the Uniform Practice Code ("UPC"); and

ii. to advise the NASD Regulation Board [and, where applicable, the Nasdaq Listing and Hearing Review Council,] with respect to the clearance and settlement of securities transactions and other financial responsibility and operational matters that may require modifications to the UPC or other Rules of the Association. [; and]

[iii. to maintain a Nasdaq Liaison Subcommittee to provide advice to Nasdaq staff on policy making related to the UPC and financial responsibility issues related to The Nasdaq Stock Market or other markets operated by The Nasdaq Stock Market and to issue interpretations or rulings with respect to the application of the UPC to cancellations of new issues, due bills, and similar situations that arise with respect to securities listed on The Nasdaq Stock Market or traded on other markets operated by The Nasdaq Stock Market.]

b. The NASD Regulation Board shall appoint the [Operations] Uniform Practice Code Committee by resolution. The [Operations] Uniform Practice Code Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

[III. Nasdaq]

[A. Delegation of Functions and Authority]

[1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:]

[a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems for non-Nasdaq securities.]

[b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.]

[c. To collect, process, consolidate, and provide to NASD Regulation the information requisite to operation of the surveillance audit trail.]

[d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, in the third market for securities listed on a registered exchange, and in the over-the-counter market, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.]

[e. To develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.]

[f. To act as a Securities Information Processor for quotations and transaction information related to securities traded on The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.]

[g. To act as processor under the Nasdaq/Unlisted Trading Privileges Plan to collect, consolidate, and disseminate quotation and transaction reports in eligible securities from all Plan Participants in a fair and non-discriminatory manner.]

[h. To administer the Association's involvement in National Market System Plans related to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.]

[i. To develop, adopt, and administer rules governing listing standards applicable to securities traded on The Nasdaq Stock Market and the issuers of those securities.]

[j. To establish standards for participation in The Nasdaq Stock Market and other markets or systems operated by Nasdaq, and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in any of such markets and systems have met the standards

established for participants; and (ii) persons participating in any of the markets or systems continue to meet the standards established for participants.]

[k. To establish and assess listing fees upon issuers and fees for the products and services offered by Nasdaq.]

[l. To establish the annual budget and business plan for Nasdaq.]

[m. To determine allocation of Nasdaq resources.]

[n. To manage external relations on matters related to trading on and the operation and functions of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market and systems operated by the Nasdaq Stock Market with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.]

[o. To operate Stockwatch in conjunction with NASD Regulation pursuant to Section IV.]

[2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.]

[B. Nasdaq Board Procedures]

[1. Listing/Delisting Decisions — Any initial decision of Nasdaq staff concerning the listing or delisting of securities on The Nasdaq Stock Market may be appealed to the Nasdaq Listing and Hearing Review Council ("Listing Council")

within 15 calendar days, or called for review by any member of the Listing Council within 45 days, as set forth in the Rules of the Association. A decision of the Listing Council may be called for review by any member of the NASD Board not later than the NASD Board meeting next following the Listing Council's decision but which is 15 calendar days or more following the decision of the Listing Council.

Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any listing/delisting decision within the 15 calendar day period following the decision of the Listing Council. Any decision not appealed or called for review shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. An issuer has the right to appeal a final action of the Association taken by the Listing Council or NASD to the Commission.]

[2. Rule Filings — The NASD Board shall review and ratify a rule change adopted by the Nasdaq Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members or issuers; (b) raises significant policy issues in the view of the Nasdaq Board, and the Nasdaq Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the Nasdaq Listing and Hearing Review Council. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the Nasdaq Board's action. During the

process of developing rule proposals, Nasdaq staff shall consult with and seek the advice of NASD Regulation staff before presenting any rule proposal to the Nasdaq Board.]

[3. Petitions for Reconsideration]

[a. If the Nasdaq Board or NASD Board takes action on a listing-related rule change, and such action is materially inconsistent with the recommendation of the Nasdaq Listing and Hearing Review Council, the Nasdaq Board or the NASD Board, as applicable, shall provide written notice of its action to the Nasdaq Listing and Hearing Review Council within one calendar day.]

[b. Within two calendar days after receipt of such notice, the Nasdaq Listing and Hearing Review Council, by majority vote, may petition the NASD Board for reconsideration. Such petition shall be in writing and include a statement explaining in detail why the Nasdaq Listing and Hearing Review Council believes that the Nasdaq Board's or NASD Board's action should be set aside.]

[c. The NASD Executive Committee shall act on a timely and complete petition for reconsideration within three calendar days after its receipt. If the NASD Executive Committee grants reconsideration, the matter shall be added to the agenda of the next regularly scheduled meeting of the NASD Board. If the NASD Executive Committee denies reconsideration, the

Nasdaq Board's or NASD Board's previous action on the rule shall be final, and staff shall submit the necessary rule filing to the Commission.]

[C. Supplemental Delegation Regarding Committees]

[1. Quality of Markets Committee ("QOMC")]

[(a) The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions:]

[(i) To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of The Nasdaq Stock Market, other markets operated by The Nasdaq Stock Market, and systems operated by The Nasdaq Stock Market from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other participants in The Nasdaq Stock Market.]

[(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.]

[(b) The QOMC will have broad representation that is equally balanced between Industry and Non-Industry committee members. The committee members shall include broad representation of participants in The

Nasdaq Stock Market, including investors, market makers, integrated retail firms, and order entry firms.]

[(c) At all meetings of the QOMC, a quorum for the transaction of business shall consist of a majority of the QOMC, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.]

[2. Market Operations Review Committee ("MORC")]

[(a) The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in Rule 11890 of the Rules of the Association in accordance with the procedures specified therein. NASD Regulation shall receive weekly reports of all determinations made by the staff or MORC under Rule 11890 for regulatory review.]

[(b) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than 50 percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.]

[IV] III. Stockwatch

The Stockwatch section handles the trading halt functions for [The Nasdaq Stock Market securities,] exchange-listed securities traded in the over-the-counter market (i.e., the Third Market), and securities quoted in the Over-the-Counter Bulletin Board. Review of all questionable market activity, possible rule infractions or any other matters that require any type of investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that NASD Regulation may deem necessary. NASD Regulation staff at all times will have access to all records and files of the Stockwatch function.

[V] IV. NASD Dispute Resolution, Inc.

A. No Change.

B. NASD Dispute Resolution Board Procedures

Rule Filings — The NASD Board shall review and ratify a rule change adopted by the NASD Dispute Resolution Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members; or (b) raises significant policy issues in the view of the NASD Dispute Resolution Board, and the NASD Dispute Resolution Board refers the rule change to the NASD Board. If the NASD Dispute Resolution Board does not refer a rule change to the NASD Board for review, the NASD Dispute Resolution Board action shall become the final action of the Association unless called for review by any member of the NASD Board not

later than the NASD Board meeting next following the NASD Dispute Resolution Board's action. During the process of developing rule proposals, NASD Dispute Resolution staff shall consult with and seek the advice of [Nasdaq and] NASD Regulation staff before presenting any rule proposal to the NASD Dispute Resolution Board.

C. No Change.

BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARTICLE I

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term:

(a) through (v) No Change.

[(w)] "Nasdaq" means The Nasdaq Stock Market, Inc.;

[(x)](w) "NASD Regulation" means NASD Regulation, Inc.;

[(y)](x) "NASD Regulation Board" means the Board of Directors of NASD

Regulation;

[(z)](y) "National Adjudicatory Council" means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

[(aa)](z) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

[(bb)](aa) "Non-Industry Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents of NASD Regulation and NASD Dispute Resolution) who is: (1) a Public Director; (2) an officer or employee of an

issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Director;

[(cc)](bb) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation) or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Governor or committee member;

[(dd)](cc) "person associated with a member" or "associated person of a member" means: (1) a natural person who is registered or has applied for registration under the Rules of the Association; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

[(ee)](dd) "Public Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board who has no material business relationship with a broker or

dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation;

[(ff)](ee) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation;

[(gg)](ff) "registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer" means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act;

[(hh)](gg) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented;

* * * * *

ARTICLE IV

MEMBERSHIP

Application for Membership

Sec. 1. (a) Application for membership in the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD, and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution, the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association; (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the NASD By-Laws, Schedules to the NASD By-Laws, and the Rules of the Association; and (3) such other reasonable information with respect to the applicant as the NASD may require.

(2) through (3) No Change.

(b) through (c) No Change.

Sec. 2. through **Sec. 8.** No Change.

ARTICLE V

REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS

Qualification Requirements

Sec. 1. No Change.

Application for Registration

Sec. 2. (a) Application by any person for registration with the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other

process as the NASD may prescribe, on the form to be prescribed by the NASD and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation,[Nasdaq,] and NASD Dispute Resolution, the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association; and

(2) No Change.

(b) through (c) No Change.

Sec. 3. through **Sec. 4.** No Change.

ARTICLE VI

DUES, ASSESSMENTS, AND OTHER CHARGES

Power of the NASD to Fix and Levy Assessments

Sec. 1. The NASD shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the NASD each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the NASD and issuers and any other persons using any facility or system which the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the NASD from time to time; provided,

however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the NASD operates or controls. The NASD may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the NASD may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Sec. 2. through Sec. 5. No Change.

ARTICLE VII

BOARD OF GOVERNORS

Powers and Authority of Board

Sec. 1. (a) through (b) No Change.

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the NASD may delegate any power of the NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, [the Nasdaq Board,] the NASD Dispute Resolution Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

Authority to Cancel or Suspend for Failure to Submit Required Information

Sec. 2. No Change.

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the NASD, or NASD Regulation, [or Nasdaq,] and the participation in any such system of any or all persons or the trading therein of any or all securities; and

(b) No Change.

Sec. 4. through Sec. 15. No Change.

* * * * *

ARTICLE XIII

POWERS OF BOARD TO IMPOSE SANCTIONS

Sec. 1. The Board is hereby authorized to impose appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities,

functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) No Change.

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the By-Laws of the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution, the Rules of the Association, or the federal securities laws, including the rules and regulations adopted thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) through (e) No Change.

Sec. 2. No Change.

ARTICLE XIV

UNIFORM PRACTICE CODE

Authority to Adopt Code

Sec. 1. No Change.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board pursuant to Section 1, shall be vested in the Board, and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. In

accordance with the Delegation Plan, the Board may delegate to the NASD Regulation Board [and the Nasdaq Board] such of the Board's powers hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. No Change.

ARTICLE XV

LIMITATION OF POWERS

Prohibitions

Sec. 1. Under no circumstances shall the Board or any officer, employee, or member of the NASD have the power to:

(a) No Change.

(b) use the name o[f]r the facilities of the NASD in aid of any political party or candidate for any public office.

Sec. 2. – Sec. 3. No Change.

Conflicts of Interest

Sec. 4. (a) No Change.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or

transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors, even though the disinterested governors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors even though the disinterested governors be less than a quorum. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation, [Nasdaq,] or NASD Dispute Resolution.

Sec. 5 No Change.

* * * * *

BY-LAWS OF NASD REGULATION, INC.

* * * * *

ARTICLE IV

BOARD OF DIRECTORS

Sec. 4.1 through **4.14** No Change.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14(a) A Director or a National Adjudicatory Council or committee member shall not directly or indirectly participate in any adjudication of the interests of any party if

that Director or National Adjudicatory Council or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or National Adjudicatory Council or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between NASD Regulation and one or more of its Directors or officers, or between NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or

transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and the NASD[, or NASD Dispute Resolution[, or Nasdaq].

Sec. 4.15 through **Sec. 4.16** No Change.

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BY-LAWS OF NASD DISPUTE RESOLUTION, INC.

ARTICLE I

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term:

(a) through (p) No Change.

[(q)] "Nasdaq" means The Nasdaq Stock Market, Inc.;

[(r)](q) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of the NASD By-Laws;

[(s)](r) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President) or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Director or Industry member;

[(t)](s) "person associated with a member" or "associated person of a member" means: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person

occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association;

[(u)](t) "Public Director" or "Public member" means a Director or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, a market for which NASD provides regulation, or NASD Dispute Resolution;

[(v)](u) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented.

* * * * *

ARTICLE IV

BOARD OF DIRECTORS

Sec. 4.1 through 4.13 No Change.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14(a) No Change.

(b) No contract or transaction between NASD Dispute Resolution and one or more of its Directors or officers, or between NASD Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely

for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Dispute Resolution and the NASD[, or NASD Regulation[, or Nasdaq].

Sec. 4.15 through 4.16 No Change.

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0100. GENERAL PROVISIONS

* * * * *

0120. Definitions.

(a) No Change.

(b) "Association"

The term “Association” means, collectively, the NASD, NASD Regulation, [Nasdaq,] and NASD Dispute Resolution.

(c) through (q) No Change.

* * * * *

0130. Delegation, Authority and Access

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and NASD Dispute Resolution, Inc. [The Nasdaq Stock Market, Inc.], hereinafter “Subsidiaries”) the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Commission pursuant to its authority under the Act.

(b) No Change.

[0140. Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors]

[(a) In order to enhance the physical security of the facilities, systems, data, and information of The Nasdaq Stock Market, Inc. (“Nasdaq”), it shall be the policy of Nasdaq to conduct a fingerprint-based criminal records check of (i) all prospective and current employees, (ii) all prospective and current independent contractors who have or are anticipated to have access to Nasdaq facilities for ten business days or longer, and (iii) all prospective and current temporary employees who have or are anticipated to have access to Nasdaq facilities for ten business days or longer. Nasdaq shall apply this policy in all circumstances where permitted by applicable law.]

[(b) Nasdaq shall submit fingerprint cards obtained pursuant to the foregoing policy to the Attorney General of the United States or his or her designee for identification and processing. Nasdaq shall at all times maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.]

[(c) Nasdaq shall evaluate information received from the Attorney General or his or her designee in accordance with the terms of a written fingerprint policy and provisions of applicable law. A felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to Nasdaq's facilities.]

[(d) A prospective employee who refuses to submit to fingerprinting shall be denied employment by Nasdaq, and a prospective independent contractor or temporary employee who refuses to submit to fingerprinting shall be denied access to Nasdaq facilities. A current employee, independent contractor, or temporary employee who refuses to submit to fingerprinting will be terminated following notice and being given three opportunities to submit.]

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

* * * * *

1022. Categories of Principal Registration

(a) through (d) No Change.

(e) Limited Principal--Direct Participation Programs

(1) No Change.

(2) For purposes of the Rule 1000 Series, “direct participation programs” shall mean programs [which] that provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code (Code) and individual retirement plans under Section 408 of the Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940. Also excluded from this definition is any program [for which quotations are displayed on Nasdaq or which] that is listed on a [registered] national securities exchange or any program for which an application for [quotation on Nasdaq or] listing on a [registered] national securities exchange has been made.

(3) No Change.

(f) through (h) No Change.

* * * * *

2000. BUSINESS CONDUCT

2100. GENERAL STANDARDS

2110. Standards of Commercial Honor and Principles of Trade

A member, in the conduct of [his] its business, shall observe high standards of commercial honor and just and equitable principles of trade.

* * * * *

IM-2110-4. Trading Ahead of Research Reports

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an interpretation to the Rules regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust the firm's inventory position in [Nasdaq-listed securities,] an exchange-listed security traded otherwise than on an exchange [in the OTC market,] or a derivative security based primarily on a specific [Nasdaq or] exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The Association believes that such activity is conduct [which] that is inconsistent with just and equitable principles of trade, and not in the best interests of the investors. Thus, this

interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in [a Nasdaq-listed security,] an exchange-listed security traded otherwise than on an exchange [in the third market], or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

[Rule 2110 states that:

A member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.]

In accordance with Article VII, Section 1(a)(ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in [a Nasdaq security,] an exchange-listed security traded otherwise than on an exchange [in the over-the-counter market,] or a derivative security based primarily upon a specific [Nasdaq or] exchange-listed security, in anticipation of the issuance of a research report in that security, is inconsistent with just and equitable principles of trade and is a violation of Rule 2110.

For the purposes of this interpretation, a “purposeful” change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the interpretation does not apply to changes in an inventory position

related to unsolicited order flow from a firm's retail or broker/dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop "Chinese Wall" procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) and (b) No Change.

(c) Filing Requirements and Review Procedures

(1) through (7) No Change.

(8) Exclusions from Filing Requirements

The following types of material are excluded from the filing requirements and (except for research reports under paragraph (G) through (J)) the foregoing spot-check procedures:

(A) through (B) No Change.

(C) Advertisements and sales literature that do no more than identify [the Nasdaq or] a national securities exchange symbol of the member or identify a security for which the member is a [Nasdaq] registered market maker.

(D) through (J) No Change.

(9) and (10) No Change.

* * * * *

2300. TRANSACTIONS WITH CUSTOMERS

2310. No Change.

* * * * *

IM-2310-1. Possible Application of SEC Rules 15g-1 through 15g-9

Members should be aware that[, effective January 1, 1990,] any transaction [which] that involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g-1 through 15g-9, and those Rules should be reviewed to determine if an executed customer suitability agreement is required.

Accounts opened, and recommendations made, prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) of the Rules of Fair Practice as previously in effect, as set forth in Notice to Members 90-52 (August 1990).

* * * * *

IM-2310-2. Fair Dealing with Customers

(a) through (d) No Change.

(e) Fair Dealing with Customers with Regard to Derivative Products or New Financial Products

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) through (2) No change.

(3) Hybrid Securities and Selected Equity-Linked Debt Securities
(“SEEDS”) [Designated] Listed [as] on Nasdaq as National Market Securities
[Pursuant to the Rule 4400 Series]

With respect to Hybrid Securities and Selected Equity-Linked Debt Securities (“SEEDS”) that have been listed as Nasdaq National Market Securities, [M]members are obligated to comply with any Rules, regulations, or procedures applicable to such securities, [pursuant to the Rule 4420 Series, as well as any other applicable Rule, regulation, or procedure of the Association.]

* * * * *

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) Unless two or more priced quotations for a [non-Nasdaq] non-exchange-listed security (as defined in the Rule [6700] 6600 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, in any transaction for or with a customer pertaining to the execution of an order in a [non-Nasdaq] non-exchange-listed security, a member or person associated with a member[,] shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Members that display priced quotations on a real-time basis for a [non-Nasdaq] non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(3) through (5) No Change.

* * * * *

2340. Customer Account Statements

(a) through (b) No Change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) through (2) No Change.

(3) “direct participation program” or “direct participation program security” refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange [or The Nasdaq Stock Market], or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) “real estate investment trust” or “real estate investment trust security” refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange [or The Nasdaq Stock Market].

(5) No Change.

(d) No Change.

* * * * *

2520. Margin Requirements

(a) through (e) No change.

(f) Other Provisions

(1) Determination of Value for Margin Purposes

Active securities dealt in on a national securities exchange or OTC
Marginable securities [listed on Nasdaq] shall, for margin purposes, be valued at

current market prices, provided that[, whether or not dealt in on an exchange or listed on Nasdaq,] only those options contracts on a stock or stock index, or a stock index warrant, having an expiration that exceeds nine months and that are listed or guaranteed by the carrying broker-dealer, may be deemed to have market value for the purposes of Rule 2520. Other securities shall be valued conservatively in view of current market prices and the amount [which] that might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried in “long” or “short” positions are subject to unusually rapid or violent changes in value, or do not have an active market [on Nasdaq or] on a national securities exchange, or where the amount carried is such that the position(s) cannot be liquidated promptly.

(2) through (9) No Change.

(10) Margin For Index/Currency Warrants

(A) This subparagraph (10) sets forth the minimum amount of margin [which] that must be deposited and maintained in margin accounts of customers having positions in index warrants, currency index warrants or currency warrants dealt in on [Nasdaq or] a national securities exchange. The Association may at any time impose higher margin requirements in respect of such positions when it deems such higher margin requirements to be advisable. The initial deposit of margin required under this Rule must be made within five full business days after the date on which a transaction

giving rise to a margin requirement is effected. The margin requirements set forth in this subparagraph (J) are applicable only to index warrants, currency index warrants and currency warrants listed for trading on [Nasdaq or] a national securities exchange on or after September 28, 1995.

(B) Definitions

The following definitions shall apply to transactions in index warrants, currency index warrants, and currency warrants.

(i) through (ii) No Change.

(iii) The term “current market value” of an index warrant, currency index warrant or currency warrant shall mean the total cost or net proceeds of the transaction on the day the warrant was purchased or sold and at any other time shall mean the most recent closing price of that issue of warrants on [Nasdaq, in the case of a Nasdaq-listed index warrants, or] the exchange on which it is listed on any day with respect to which a determination of current market value is made.

(iv) through (xiv) No Change.

(C) through (D) No Change.

* * * * *

2522. Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions

(a) The following definitions shall apply to the margin requirements for options, currency warrants, currency index warrants and stock index warrants transactions:

(1) through (46) No Change.

(47) Options Trading

The term “options trading” means trading in any option issued by The Options Clearing Corporation, whether or not of a type, class or series [which] that has been approved for trading [on Nasdaq or] on a national securities exchange.

(48) through (49) No Change.

(50) Primary Market

The term “primary market” means (A) in respect of an underlying security that is principally traded on a national securities exchange, the principal exchange market in which the underlying security is traded and (B) in respect of an underlying security that is principally traded in the over-the-counter market, the market reflected by any widely recognized quotation dissemination system or service [(Nasdaq in the case of a Nasdaq stock)].

(51) through (77) No Change.

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2700. SECURITIES DISTRIBUTIONS

* * * * *

2720. Distribution of Securities of Members and Affiliates --Conflicts of Interest

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (2) No Change.

(3) Bona fide independent market — a market in a security [which] that:

(A) No Change.

(B) has a market price as of the close of trading on the trade date immediately preceding filing of the registration statement or offering circular of five dollars or more per share, and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days immediately preceding the filing of the registration statement or offering circular; [and]

(C) for at least 90 calendar days immediately preceding the filing of the registration statement or offering circular with the department[:]

[(i)] has been listed on and is in compliance with the requirements for continued listing on a national securities exchange; [or] and

[(ii) has been listed on and is in compliance with the requirements for continued listing on The Nasdaq Stock Market and has had at least two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement and the effective date of the offering; and]

(D) No Change.

[(4) Bona fide independent market maker — a market maker that:]

[(A) is registered as a Nasdaq or ADF market maker in the security to be distributed pursuant to this Rule;]

[(B) is not an affiliate of the entity issuing securities pursuant to paragraph (c) of this Rule and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement and at the commencement of the distribution, five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest in five percent or more of the distributable profits or losses of such entity which is a partnership; and]

[(C) is not a recipient of any of the net proceeds of the offering.]

(5) through (18) renumbered (4) through (17).

(c) through (p) No Change.

* * * * *

2800. SPECIAL PRODUCTS

2810. Direct Participation Programs

(a) No Change.

(b) Requirements

(1) No Change.

(2) Suitability

(A) through (C) No Change.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program [for which quotations are displayed on Nasdaq or which] that is listed on a [registered] national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for [inclusion on Nasdaq or] listing on a [registered] national securities exchange has been approved by [Nasdaq or] such exchange and the applicant makes a good faith representation that it believes such [inclusion on Nasdaq or] listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) through (5) No Change.

(6) Participation in Rollups

(A) through (B) No Change.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program [which] that values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely[-]tradeable securities; provided, however, that:

1. through 3. No Change.

4. freely[-]tradeable securities [utilized] used as compensation to dissenting limited partners must be previously listed on a national securities exchange [or previously traded on Nasdaq] prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited

partnership interests must be determined in relation to the average last sale price of the freely[-]tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely[-]tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be [utilized] used as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is “affiliated” with the issuer of the freely[-]tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner’s interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and

compensation as otherwise provided by this
subparagraph.

b. and c. No Change.

(ii) No Change.

(c) No Change.

* * * * *

2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants

2841. General

(a) Applicability - This Rule 2840 Series shall be applicable[: (1) to the conduct of accounts, the execution of transactions, and the handling of orders in index warrants listed on The Nasdaq Stock Market (“Nasdaq”); and (2)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(b) through (c) No Change.

* * * * *

2850. Position Limits

[(a)] Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee

thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed [on Nasdaq or] on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the [Association, in the case of Nasdaq-listed index warrants, or the] exchange on which the index warrant is listed.

[(b) In determining compliance with this Rule, the position limits for Nasdaq-listed index warrants are as follows:]

[(1) Fifteen million warrants with respect to warrants on the same stock index (other than the Standard & Poor's MidCap 400 Index) with an original issue price of ten dollars or less.]

[(2) Seven million five hundred thousand warrants, with respect to warrants on the Standard & Poor's MidCap 400 Index with an original issue price of ten dollars or less.]

[(3) For stock index warrants with an original issue price greater than ten dollars, positions in these warrants must be converted to the equivalent-of warrants on the same index priced initially at ten dollars by dividing the original issue price of the index warrants priced above ten dollars by ten and multiplying this number by the size

of such index warrant position. After recalculating a warrant position pursuant to this subparagraph, such recalculated warrant position shall be aggregated with other warrant positions on the same underlying index on the same side of the market and subjected to the applicable position limit set forth in subparagraph (1) or (2) above.

For example, if an investor held 100,000 Nasdaq 100 Index warrants offered originally at \$20 per warrant, the size of this position for the purpose of calculating position limits would be 200,000, or 100,000 times 20/10.]

2851. Exercise Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly,[:]

[(1) has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess of the limits for index warrant positions contained in Rule 2850; or

(2)] has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant [not dealt in on Nasdaq].

(b) No change.

2852. [Reporting Requirements] Reserved

[(a) Each member shall file with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer account of the member, which has established an aggregate position of 100,000 index warrants on the same side of the market in an index warrant issue listed on Nasdaq, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market traded on Nasdaq or a national securities exchange.]

[(b) Such report shall identify the person or persons having an interest in such account and shall identify separately the total number of each type of index warrant that comprises the reportable position in such account. The report shall be in such form as may be prescribed by the Association and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions necessitating the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member filing such report shall file with the Association such additional periodic reports with respect to such account as the Association may from time to time prescribe.]

* * * * *

2854. [Trading Halts or Suspensions] Reserved

[(a) The trading in an index warrant on Nasdaq shall be halted whenever the Senior Vice President for Market Regulation, or its designee, shall conclude that such action is

appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:]

[(1) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;]

[(2) the current calculation of the index derived from the current market prices of the stocks is not available;]

[(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.]

[(b) Trading in index warrants that has been the subject of a trading halt or suspension may resume if the Senior Vice President for Market Regulation, or its designee, determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are served by a resumption of trading. In either event, the reopening may not occur until the Association has determined that trading in underlying stocks whose weighted value represents more than 50% of the index is occurring.]

* * * * *

2860. Options

(a) No Change.

(b) Requirements

(1) General

(A) Applicability--This Rule shall be applicable (i) [to the trading of options contracts issued by The Options Clearing Corporation and displayed

on The Nasdaq Stock Market and to the terms and conditions of such contracts; (ii)] to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members [who] that are not members of an exchange on which the option executed is listed; [(iii)] (ii) to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options; and [(iv)] (iii) to other matters related to options trading.

Unless otherwise indicated herein, subparagraphs (3) through (12) shall apply only to [options displayed on Nasdaq and] standardized and conventional options on common stock and subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a), including common stock. The position and exercise limits for FLEX Equity Options for members [who] that are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.

(B) through (C) No Change.

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) through (F) No Change.

(G) Call — The term “call” means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract. In the case of a “call” issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from The Options Clearing Corporation the number of units of the underlying security or receive a dollar equivalent of the underlying index covered by the option contract.

(H) through (EE) No Change.

[(FF) Nasdaq Market Index Option — The term “Nasdaq market index option” means an option contract issued by The Options Clearing Corporation and displayed on Nasdaq based upon an underlying index which has been deemed by the Commission to be a market index.]

[(GG) Nasdaq Option Transaction — The term “Nasdaq option transaction” means a transaction effected by a member of the Association for the purchase or sale of an option contract which is displayed on The Nasdaq Stock Market or for the closing out of a long or short position in such option contract.]

(HH) through (KK) renumbered (FF) through (II).

[(LL)](JJ) Options Contract — The term “options contract” means any option as defined in paragraph (a). For purposes of subparagraphs (3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. [A Nasdaq index option shall be deemed to cover a dollar equivalent to the numerical value of the underlying index multiplied by the applicable index multiplier.] If a stock option is granted covering some other number of shares, then for purposes of subparagraphs (3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract [which] that, when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares [which] that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(MM) through (PP) renumbered as (KK) through (OO).

[(QQ)](PP) Put — The term “put” means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a

dollar equivalent of the underlying index covered by the option contract. In the case of a “put” issued by The Options Clearing Corporation on common stock [or on an option displayed on The Nasdaq Stock Market], it shall mean an option contract under which the holder of the option has the right, in accordance with terms of the option, to sell to The Options Clearing Corporation the number of units of the underlying security covered by the option contract or to tender the dollar equivalent of the underlying index.

[(RR) Registered Nasdaq Index Options Market Maker — The term “registered Nasdaq index options market maker” means a member who meets the qualifications for such, as set forth in subparagraph (3), is willing and able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

(SS) through (AAA) renumbered (QQ) through (YY).

[(BBB) Underlying Index — The term “underlying index” means an index upon which a Nasdaq index option contract is based.]

(CCC) – (DDD) renumbered (ZZ) – (AAA).

(3) Position Limits

(A) Stock Options--Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any

partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through [Nasdaq,] the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) No Change.

(ii) 22,500 (or 50,000 during the Pilot Period) options contracts of the put class and the call class on the same side of the market covering the same underlying security, provid[ing]ed that the 22,500 (or 50,000 during the Pilot Period) contract position limit shall only be available for option contracts on securities that underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 22,500 (or 50,000 during the Pilot Period) option contracts; or

(iii) 31,500 (or 75,000 during the Pilot Period) option contracts of the put class and the call class on the same side of the market covering the same underlying security provid[ing]ed that the 31,500 (or

75,000 during the Pilot Period) contract position limit shall only be available for option contracts on securities that underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 31,500 (or 75,000 during the Pilot Period) option contracts; or

(iv) 60,000 (or 200,000 during the Pilot Period) options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]ed that the 60,000 (or 200,000 during the Pilot Period) contract position limit shall only be available for option contracts on securities that underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 60,000 (or 200,000 during the Pilot Period) option contracts; or

(v) 75,000 (or 250,000 during the Pilot Period) options contracts of the put and the call class on the same side of the market covering the same underlying security, provid[ing]ed that the 75,000 (or 250,000 during the Pilot Period) contract position limit shall only be available for option contracts on securities that underlie [Nasdaq or] exchange-traded options qualifying under applicable rules for a position limit of 75,000 (or 250,000 during the Pilot Period) option contracts; or

(vi) through (ix) No Change.

(B) Index Options

[(i)] Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options [displayed on Nasdaq or] dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by [the Association, in the case of Nasdaq index options, or] the exchange on which the option trades.

[(ii)] In determining compliance with this subparagraph (3), option contracts on a market index displayed in Nasdaq shall be subject to a contract limitation fixed by the Association, which shall not be larger than the equivalent of a \$300 million position. For this purpose, a position shall be determined by the product of the closing index value times the index multiplier times the number of contracts on the same side of the market.]

(C) through (D) No Change.

(4) through (6) No Change.

(7) Limit on Uncovered Short Positions

Whenever the Association shall determine in light of current conditions in the markets for options, or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in option contracts of a given class in excess of the limits established by the Association for purposes of this subparagraph or that a percentage of outstanding short positions in option contracts of a given class are uncovered, in excess of the limits established by the Association for purposes of this subparagraph, the Association, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transactions in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class. [The Association may exempt transactions in Nasdaq options by registered Nasdaq options market makers from restrictions imposed under this subparagraph and it shall rescind such restrictions upon its determination that they are no longer appropriate.]

(8) through (11) No Change.

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security or index, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and, for other than options issued by The Options Clearing Corporation, the date of expiration. The confirmation shall by appropriate symbols distinguish between exchange listed [and Nasdaq option transactions] and other transactions in option contracts.

(13) through (22) No Change.

(23) Tendering Procedures for Exercise of Options

(A) Exercise of Options Contracts

(i) Subject to the restrictions established pursuant to paragraph (b)(4) hereof and such other restrictions [which] that may be imposed by the Association, The Options Clearing Corporation or an options exchange pursuant to appropriate rules, an outstanding option contract issued by The Options Clearing Corporation may be exercised during the time period specified in the rules of The Options Clearing Corporation. An exercise notice may be tendered to The Options

Clearing Corporation only by the clearing member in whose account the option contract is carried. Exercise instructions of their customers relating to exchange listed [or Nasdaq] option contracts shall not be accepted by members after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract. Exercise instructions in respect of such option contracts carried in any proprietary account of a member shall similarly not be accepted by any other member with [whom] which such member maintains an account after 5:30 p.m. (Eastern Time) on the business day immediately prior to the expiration date of any option contract.

(ii) through (iii) No Change.

(B) through (D) No Change.

[(E) Exercise of Nasdaq Index Option Contracts

(i) With respect to Nasdaq index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations also are required to comply with the following procedures:]

[a. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be

received or prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is received or prepared. Member organizations must accept exercise instructions until 4:10 p.m. (Eastern Time) each business day.]

[b. A memorandum to exercise any Nasdaq index option contract issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m. (Eastern Time) and must be time-stamped at the time it is prepared.]

[c. Any member or member organization that intends to submit an exercise notice for 25 or more contracts in the same series of Nasdaq index options on the same business day on behalf of an individual customer, registered Nasdaq options market maker or firm account must notify the Association of such exercises in a manner prescribed by the Association no later than 4:10 p.m. (Eastern Time) on that day. For purposes of this subparagraph (E), exercises for all accounts controlled by the same individual must be aggregated.]

[(ii) The provisions of subparagraphs (i) a. and b. above are not applicable in respect to any series of Nasdaq index options on the last day of trading prior to the expiration date of such series.]

(24) No Change.

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2870. [Nasdaq Index Options] Reserved

[2871. Definitions]

[(a) Aggregate Current Index Value--The term “aggregate current index value” means the value required to be delivered to the holder of a call or by the holder of a put (against payment of the aggregate exercise price) upon the valid exercise of an index option. Such value is equal to the index multiplier times the current index value on the trading day on which an exercise notice is properly tendered to The Options Clearing Corporation, or, if the day on which such notice is so tendered is not a trading day, then on the most recent trading day.]

[(b) Aggregate Index Option Exercise Price--The term “aggregate index option exercise price” in respect of an index option means the exercise price of such option times the index multiplier.]

[(c) Best Bid and Asked--The term “best bid” means the best or highest price of all the open, active bids. The term “best asked” means the best or lowest (but greater than zero) price of all the open active offers.]

[(d) Cabinet Transaction--The term “cabinet transaction” means a transaction in a Nasdaq index option executed at a price of \$1.00 per contract for the purpose of opening or closing a position in an index option having a nominal market value.]

[(e) Call--The term “call” means an option contract under which the holder of the options has the right, in accordance with the terms of the option, to buy a number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract.]

[(f) Class of Options--The term “class of options” means all option contracts of the same type of option covering the same underlying security or index.]

[(g) Clearing Member--The term “clearing member” means a member of the Association which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation.]

[(h) Closing Purchase Transaction--The term “closing purchase transaction” means an option transaction in which the purchaser’s intention is to reduce or eliminate a short position in the series of options involved in such transaction.]

[(i) Closing Sale Transaction--The term “closing sale transaction” means an option transaction in which the seller’s intention is to reduce or eliminate a long position in the series of options involved in such transaction.]

[(j) Combination Order--The term “combination order” means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index or put and call option contracts representing the same

number of shares or units of trading at option, which contracts do not have both the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares, or units of trading at option, which contracts do not have both the same exercise price and expiration date (e.g., an order to buy two XYZ April 50 calls and to buy two XYZ July 40 puts is a combination order). In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if such contracts represent the same number of shares or units of trading at option.]

[(k) Covered--The term “covered” in respect of a short position in a call option contract means that the writer’s obligation is secured by a “specific deposit” or an “escrow deposit,” meeting the conditions of Rules 610(e) or 610(h), respectively, of the rules of The Options Clearing Corporation, or the writer holds in the same account as the short position, on a unit-for-unit basis, a long position either in the underlying security or in an option contract of the same class of options where the exercise price of the option contract in such long position is equal to or less than the exercise price of the option contract in such short position. The term “covered” in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.]

[(l) Current Index Value--The term “current index value” means the level of a particular index (derived from the current market prices and capitalization of the underlying securities in the index group) at the close of trading on any trading day, or any multiple or fraction thereof specified by the Association as such value is reported by the reporting authority.]

[(m) Expiration Cycle--The term “expiration cycle” means all option contracts covering the same underlying security or index having the same expiration month, or the time period during which such options are authorized for trading.]

[(n) Expiration Date--The term “expiration date” of a Nasdaq option contract issued by The Options Clearing Corporation means the day and time fixed by the rules of The Options Clearing Corporation for the expiration of all option contracts having the same expiration month as such option contract.]

[(o) Expiration Month--The term “expiration month” in respect of an option contract means the month and year in which such option contract expires.]

[(p) Index Dollar Equivalent--The term “index dollar equivalent” is the dollar amount which results when the index value is multiplied by the appropriate index multiplier.]

[(q) Index Group--The term “index group” means a group of securities, whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values in a widely disseminated securities index specified by the Association.]

[(r) Index Multiplier--The term “index multiplier” as used in reference to an index option contract means the dollar amount (as specified by the Association) by which the current index value is multiplied to arrive at the index dollar equivalent. Such term replaces the term “unit of trading” used in reference to other kinds of options.]

[(s) Index Option Exercise Price--The term “index option exercise price” in respect of an index option means the specified index value which, when multiplied by the index multiplier, will yield the aggregate exercise price at which the aggregate current index value may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option.]

[(t) Index Option Premium--The term “index option premium” means the price of each such option (expressed in points), as agreed upon by the purchaser and seller in such transaction, times the index multiplier and the number of options subject to the transaction.]

[(u) Index Underlying Security--The term “index underlying security” means any of the securities included in an index group underlying a class of Nasdaq index options.]

[(v) Internalized Trade Transaction--The term “Internalized Trade Transaction” or “ITT” means an OCT entered into The Nasdaq Stock Market by a participant containing the terms of a transaction executed by the participant as principal where the participant is also the order entry firm.]

[(w) Long Position--The term “long position” means the number of outstanding option contracts of a given series of options held by a person (purchaser).]

[(x) Nasdaq Index Option Contract--The term “Nasdaq index option contract” means an option contract which is authorized for quotation display on The Nasdaq Stock Market.]

[(y) Nasdaq Index Options Order Entry Firm--The term “order entry firm” shall mean a member of the Association who is registered as an order entry firm for purposes of participation in the Nasdaq Index Options Service which permits the firm to enter options orders via Order Confirmation Transactions (OCT) or Internalized Trade Transaction (ITT).]

[(z) Nasdaq Index Options Participant--The term “participant” shall mean either a Nasdaq index options market maker or Nasdaq index options order entry firm registered as such with the Association for participation in the Nasdaq Index Options Service.]

[(aa) Nasdaq Index Options Service--The term “Nasdaq Index Option Service” or “Service” means the Service owned and operated by The Nasdaq Stock Market, Inc. which enables participants to report transaction in Nasdaq index options, to have reports of all Nasdaq index options transactions automatically forwarded to the Options Price Reporting Authority (OPRA) for dissemination to the public and the industry, and to “lock-in” these trades by sending both sides to The Options Clearing Corporation for clearance and settlement; and to provide participants with sufficient monitoring and updating capabilities to participate in such trading environment.]

[(bb) Nasdaq Market Index Option--The term “Nasdaq market index option” means an option contract issued by The Options Clearing Corporation and displayed on The Nasdaq Stock Market based upon an underlying index which has been deemed by the Commission to be a market index.]

[(cc) Opening Purchase Transaction--The term “opening purchase transaction” means an option transaction in which the buyer’s intention is to create or increase a long position in the series of options involved in such transaction.]

[(dd) Opening Writing Transaction--The term “opening writing transaction” means an option transaction in which the seller’s (writer’s) intention is to create or increase a short position in the series of options involved in such transaction.]

[(ee) Options Clearing Corporation--The term “Options Clearing Corporation” (OCC) means The Options Clearing Corporation, the issuer of options displayed on The Nasdaq Stock Market.]

[(ff) Order Confirmation Transaction--The term “Order Confirmation Transaction” or “OCT” means a message entered into The Nasdaq Stock Market by an order entry firm which is directed to a market maker not simultaneously acting as both a market maker and an order entry firm, which message contains the information specified by the Association as necessary for trade reporting purposes and for submission of trade detail to The Options Clearing Corporation.]

[(gg) Outstanding--The term “outstanding” in respect of an option contract means an option contract which has neither been the subject of a closing sale transaction nor has been exercised nor has reached its expiration date.]

[(hh) Put--The term “put” means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of

the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract.]

[(ii) Registered Nasdaq Index Options Market Maker--The term “registered Nasdaq index options market maker” means a member who meets the qualifications for such as set forth in Rule 2873, is willing and able to serve as such in connection with Nasdaq index option contracts and who is authorized by the Association to do so.]

[(jj) Rules of The Options Clearing Corporation--The term “rules of The Options Clearing Corporation” means the by-laws and the rules of The Option Clearing Corporation, and all written interpretations thereof as may be in effect from time to time.]

[(kk) Series of Options--The term “series of options” means all option contracts of the same class of options having the same exercise price and expiration date and which cover the same number of units of the underlying security or index.]

[(ll) Short Position--The term “short position” means the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).]

[(mm) Spread Order--The term “spread order” means an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares or units of trading at option in a different series of the same class of options.]

[(nn) Straddle Order--The term “straddle order” means an order to buy a number of call option contracts and the same number of put option contracts with respect to the same

underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option, and having the same exercise price and expiration date; or an order to sell a number of call option contracts and the same number of put option contracts with respect to the same underlying security or index, or put and call option contracts representing the same number of shares or units of trading at option and having the same exercise price and expiration date, (e.g., an order to buy two XYZ July 50 calls and to buy two XYZ July 50 puts is a straddle order). In the case of adjusted option contracts, a straddle order need not consist of the same number of put and call contracts if such contracts both represent the same number of shares, or units of trading at option.]

[(oo) Type of Options--The term “type of options” means the classification of an option contract as either a put or a call.]

[(pp) Uncovered--The term “uncovered” in respect of a short position in an option contract means the short position is not covered.]

[(qq) Underlying Index--The term “underlying index” means an index upon which a Nasdaq index option contract is based.]

[(rr) Unit of Trading--The term “unit of trading” means the number of units of the underlying security designated by The Options Clearing Corporation as the subject of a single option contract. In the absence of any other designation, the unit of trading for a common stock is 100 shares.]

[2872. Nasdaq Index Option Services Available]

[(a) Level 2 Nasdaq Index Options Service]

[(1) Nature of Service]

This service will provide the subscriber with access to the quotations of all of the registered Nasdaq index options market makers entering quotes on each of the Nasdaq index options, in addition to the last reported sale for each Nasdaq index option, the most recent index computation for the underlying index, daily high and low, daily volume, time of last sale and inside quotations.]

[(2) Availability]

This service is available only to persons approved and authorized by the Association for retrieval of Nasdaq index options quotation and last sale data.]

[(b) Level 3 Nasdaq Index Options Service]

[(1) Nature of Service]

This service will enable a registered Nasdaq index options market maker to enter quotations in The Nasdaq Stock Market only on the Nasdaq index options as to which the Association has authorized it to enter quotes pursuant to the procedures set forth in Rule 2873. A subscriber to Level 3 Nasdaq Index Options Service shall also receive Level 2 Nasdaq Index Options Service.]

[(2) Availability]

Level 3 Nasdaq Index Options Service is available to any member which, upon application, is approved and authorized by the Association to participate in The Nasdaq Stock Market as a registered Nasdaq index options market maker.]

[2873. Registration, Qualification and Other General Requirements Applicable to All Nasdaq Index Options Market Makers]

[(a) Registration of Nasdaq Index Options Market Makers--Prior to acting as a market maker in Nasdaq index options, a member must make application to the Association on a form prescribed by the Association and become registered as such with it. In connection with such application, a member must submit to the Association such financial and other information as required by the Association to determine if such member meets the qualifications of a registered Nasdaq index options market maker specified herein. Such other information will include those classes and series of Nasdaq options in which such member desires to be registered as an index options market maker.]

[(b) Participation in the Nasdaq Index Options Service shall be mandatory for all Nasdaq index options market makers. Accordingly, a Nasdaq index options market maker's registration as such shall be conditioned upon the member's initial and continuing compliance with the following requirements:]

[(1) execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options market maker to prevent the unauthorized entry of information into the Nasdaq Index Options Service;]

[(3) acceptance and settlement of each NASD index option trade that the Service identifies as having been effected by such Nasdaq index options market

maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date;]

[(4) membership in The Options Clearing Corporation, or a clearing arrangement with such member; and]

[(5) compliance with all applicable rules and operating procedures of the Association and the Commission.]

[(c) Nasdaq index options market makers shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Obligation to Honor Trades--If a Nasdaq index options market maker, or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a trade, such market maker, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(e) Compliance with Rules and Registration Requirements--Failure by Nasdaq index options market makers to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participants to censure, fine, suspension or revocation of its registration as Nasdaq index options market maker and/or order entry firm or any other fitting penalty under the Rules of the Association.]

[(f) Market Maker Financial Requirements--A registered Nasdaq index options market maker shall continuously maintain net capital of at least \$50,000 computed in accordance with the provisions of SEC Rule 15c3-1(c)(2) under the Act, plus \$5,000 per options series up to a maximum requirement of \$150,000.]

[(g) Normal Business Hours--A registered Nasdaq index options market maker shall keep the Association advised as to the normal business hours during which it shall enter quotations. All firms should be open and active between the hours of 9:30 a.m. and 4:10 p.m. (Eastern Time). Nasdaq shall publish a "close symbol" for a registered Nasdaq index options market maker on Level 2 and Level 3 terminals at the close of such firm's normal business hours.]

[(h) Initiation of Service--Upon initial application, the registration of a Nasdaq index options market maker in a Nasdaq index options series shall be effective at the start of business on the second business day following receipt of his registration application by the Association; provided, however, said registration is accepted by the Association. If said initial registration is received for a Nasdaq index options series which has not previously been authorized by the Association, the registered Nasdaq index options market maker's registration shall be effective at the start of business on the first day that the Nasdaq options series is authorized for quotation by the Association; provided, however, said registration is accepted by the Association. A Nasdaq index options market maker shall commence market making and participation in the Service by initially contacting the Nasdaq Market Operations Center to obtain authorization for the trading of a particular Nasdaq index options series and

identifying those terminals on which the Service information is to be displayed and thereafter by an appropriate keyboard entry which obligates him to execute transactions for at least one contract at the market maker's displayed quotations so long as the market maker remains active. All entries shall be made in accordance with the requirements set forth in the User Guide.]

[(i) Withdrawal Procedure for Nasdaq Index Options Market Makers]

[(1) With the approval of the Association, a registered Nasdaq index options market maker may suspend its quotations in a Nasdaq index options series for a specified period of time upon a showing that it is seriously impaired in its ability to enter quotations, or, in the case of a contemplated financing in the underlying security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Association.]

[(2) In the event of a malfunction in the Nasdaq index options market maker's equipment rendering on-line communications with the Service inoperable, the Nasdaq index options market maker is obligated to immediately contact the Nasdaq Market Operations Center by telephone to request withdrawal from the Service. Nasdaq operational personnel will in turn enter the withdrawal notification from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(3) A registered Nasdaq index options market maker who suspends its quotations in a Nasdaq index options series pursuant to subparagraphs (1) and (2) above may not re-enter quotations in such series during the same trading day without the prior approval of the Association.]

[(j) Voluntary Termination--A registered Nasdaq index options market maker may voluntarily terminate its registration as to any Nasdaq options series by withdrawing its quotations from the Service without prior approval of the Association, subject to the conditions set forth in Rules 2875 and 2876. Such Nasdaq index options market maker may, by making application to the Association under the procedures and requirements set forth in this Rule, re-register as a Nasdaq index options market maker in a Nasdaq options series in which his registration is terminated.]

[(k) A Nasdaq index options market maker withdrawing option quotations from the Nasdaq Index Options Service for any reason has a specific obligation to monitor his status to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the withdrawing market maker.]

[(l) Suspension and Termination of a Registered Nasdaq Index Options Market Maker's Authority to Enter Quotations by Action of the Association--The Association may, pursuant to provisions specified in the Code of Procedure as set forth in the Rule 9000 Series, suspend, condition or terminate a registered index options market maker's authority

to enter quotations on one or more series of Nasdaq index options for violations of applicable Rules of the Association.]

[(m) Termination of Service on the Failure to Promptly Pay Fines and Assessments]

[(1) The Association, upon notice, may terminate service on any level of Nasdaq Index Options Service for failure of a subscriber to maintain the standards of availability specified in this Rule for such service or to pay the Service operator for services rendered.]

[(2) Any member which is a respondent in a complaint pursuant to any Rule of the Association is required promptly to pay any fine or costs imposed to the Treasurer of the Association. In the event that the respondent fails to do so, the Association may, after ten business days notice in writing to such respondent, suspend his authority to enter options quotations into or receive options quotations from Level 2 and 3 of the Nasdaq Index Options Services.]

[2874. Character of Index Options Quotations Entered Into the Nasdaq Index Options Service by All Nasdaq Index Options Market Makers]

[(a) All bids or offers for Nasdaq index options shall be for at least one option contract or the minimum unit of trading.]

[(b) All bids and offers for Nasdaq index options shall be expressed in terms of the applicable index multiplier (e.g., a bid of five for a Nasdaq index option having an index multiplier of \$100 shall represent a bid to pay a premium of \$500 for an option contract).]

[(c) All bids or offers for a Nasdaq index option contract for which The Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the OCC's By-Laws shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading.]

[(d) A registered Nasdaq index options market maker who receives a buy or sell order must execute a trade for at least one contract at his quotation as they appear on the Nasdaq CRT screen at the time of receipt of any such buy or sell order. Each quotation entered by a registered Nasdaq index options market maker must be reasonably related to the prevailing market.]

[(e) A registered Nasdaq index options market maker will be permitted to enter a one- sided quotation (0-1/16) with respect to those options which have no present market value.]

[(f) Crossed Markets--A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter quotations into the Nasdaq Index Options Service if (1) the bid quotation entered is greater than the ask quotation of another registered market maker in the same options series or (2) the asked quotation is less than the bid quotation of another registered market maker in the same options series.]

[(g) Quote Spread Parameters--A registered Nasdaq index options market maker shall not be permitted, except under extraordinary circumstances, to enter index option

quotations into the Nasdaq Index Options Service if the spread between the market maker's bid and ask exceeds the following parameters:]

[(1) $\frac{1}{4}$ of \$1, if the member's bid price is \$.50 or less;]

[(2) $\frac{1}{2}$ of \$1, if the bid price is more than \$.50 but does not exceed \$10;]

[(3) $\frac{3}{4}$ of \$1, if the bid price is more than \$10 but does not exceed \$20; or]

[(4) \$1, if the bid price is more than \$20;]

[providing, however, that the allowable quote spread differentials for the longest term options series open for trading in each option class shall be twice the amounts stated in subparagraphs (1) through (4) above.]

[(h) Except under extraordinary circumstances, a registered Nasdaq index options market maker shall not be permitted to enter on an intra-day basis a bid quotation more than \$1 lower and/or an offering more than \$1 higher than the last reported transaction for the particular index option contract. However, this standard shall not ordinarily apply if the price per share (or other unit of trading of the underlying index value has changed since the last preceding transaction for the particular option contract, in which event a market maker may then bid no lower than or offer no more than \$1 plus the aggregate change in the price per unit of trading) of the underlying index value since the time of the last preceding transaction for the particular index option contract. Nothing in this paragraph shall alter the maximum bid-ask differential established by paragraph (g) above.]

[(i) Whenever, in the judgment of the Association, the interest of maintaining a fair and orderly market so requires, the Association may waive the requirements of paragraph (h) above on a case by case basis.]

[(j) When unusual trading conditions exist, and the interest of maintaining a fair and orderly market, the Association may waive the requirements of paragraph (g) above in those option series 10 or more points in the money to allow market makers to make bid/ask differentials as wide as the quotation in the primary market as determined by the inside quotation displayed on Nasdaq. Such waiver shall not automatically carry over from one day to the next.]

[2875. Commitment Rules Applicable to Options Market Makers in Nasdaq Index Options]

[(a) Commitment Rule for Index Options Market Makers. A market maker in a Nasdaq index option, unless excused from entering quotations pursuant to Rule 2873(i) shall, during normal options business hours, continuously quote all options series in such index option through the expiration of the longest term index options authorized for trading at the time the member commences such market making. Failure to abide by this commitment shall cause the index options market maker to be subject to the sanctions contained in Rule 2876.]

[(b) The following examples illustrate the commitment rule for index option market makers established by this Rule.]

[(1) Member A is authorized as a Nasdaq index options market maker prior to the expiration of January Nasdaq-100 Index® Options. Member A is thus obligated to continuously quote all series of Nasdaq-100 put and call options authorized for trading in the January, February and March expirations through the expiration of the March options.]

[(2) Member B is authorized as a market maker in Nasdaq-100 Index® Options at the time these options are authorized for the Nasdaq Options Program, but prior to the commencement of trading in these index options. The first authorized expiration cycle in Nasdaq-100 Index options will consist of options expiring in April, May and June with trading to commence in March. Member B would be obligated to continuously quote all authorized Nasdaq-100 Index option series from the commencement of trading in such options in March through the expiration of June Nasdaq-100 Index options.]

[2876. Sanctions Applicable to Nasdaq Index Options Market Makers]

[(a) A registered Nasdaq market maker in index options whose quotation for any option series in which the member is a market maker is withdrawn without the approval of the Association shall, at or before the daily close of the Nasdaq Index Options Service, have its registration terminated in all Nasdaq index options series covering the same underlying index as that for which option quotations were suspended by the member, subject, however, to the re-registration procedures set forth in paragraph (b) below.]

[(b) A Nasdaq index options market maker in index options whose registration in options classes is terminated pursuant to paragraph (a) above may, by making application to the Association under the procedures and requirements set forth in Rule 2873, re-register as a Nasdaq index options market maker in any Nasdaq index options series in the options classes in which his registration was terminated pursuant to paragraph (a) above providing, however, that the Association shall not grant effectiveness to such registration until the near- term options and those in the following expiration cycle have expired.]

[(c) The following example illustrates the sanction for index options market makers established by paragraph (a) above.]

[(1) Market Maker A, without approval of the Association, withdraws quotations from the Nasdaq Index Options Service for a series of Nasdaq-100 Index® options causing the member's registration in all Nasdaq-100 Index options series to be terminated pursuant to paragraph (a) above.]

[(2) At the time Market Maker A's registration is terminated, January, February and March Nasdaq-100® Index options are trading. Pursuant to paragraph (b), any application by member A to again register as a market maker in Nasdaq-100 Index options would not be granted effectiveness by the Association until the expiration of the February Nasdaq-100 Index options.]

[(d) A registered market maker in Nasdaq index options who withdraws index options quotations from the Nasdaq Index Options Service in any options series without prior authorization during the 15 business days preceding the expiration of the near-term options on the same underlying index may be deemed to be in violation of Rule 2110.]

[2877. Requirements Applicable to Nasdaq Index Options Order Entry Firms]

[(a) Participation in the Nasdaq Index Options Service as an order entry firm requires current registration as such with the Association. Such registration shall be conditioned upon the order entry firm's initial and continuing compliance with the following requirements:]

[(1) Execution of a Nasdaq Index Options Service participant application agreement with the Association;]

[(2) membership in, or a clearing arrangement with, a member of The Options Clearing Corporation;]

[(3) compliance with all applicable rules and operating procedures of the Association and the Commission;]

[(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq index options order entry firm to prevent the unauthorized entry of information into the Nasdaq Index Options Service; and]

[(5) acceptance and settlement of each trade that the Service identifies as having been effected by such Nasdaq index options order entry firm or, if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date.]

[(b) The registration required hereunder will apply solely to the qualification of a participant to participate in the Nasdaq Index Options Service. Such registration shall not be conditioned upon registration in any particular eligible or active Nasdaq index options contracts.]

[(c) Each participant shall be under a continuing obligation to inform the Association of non-compliance with any of the registration requirements set forth above.]

[(d) Upon the effectiveness of registration as a Nasdaq index options order entry firm, the participant may commence activity for entry of orders, as applicable. The operating hours of the Nasdaq Index Options Service are currently 9:30 a.m. to 4:10 p.m. (Eastern Time), but may be modified by the Association. The extent of participation in Nasdaq by a Nasdaq index options order entry firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.]

[(e) Market orders shall not be permitted in the Nasdaq Index Options Service. All orders entered into the Service other than accommodation transactions shall be priced and all orders shall be directed to a specified Nasdaq index options market maker. Nasdaq index options order entry firms will be immediately notified on the terminal screen and printer, if requested, of the execution or rejection of an order entered into via OCT.]

[(f) If a Nasdaq index options order entry firm or clearing member acting on his behalf, is reported by the Service to clearing at the close of any trading day, or shown by the activity reports generated by the Service as constituting a side of a Nasdaq index option trade, such order entry firm or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.]

[(g) Failure by a Nasdaq index options order entry firm to comply with any of the Rules or registration requirements applicable to the Service identified herein shall subject such participant to censure, fine, suspension or revocation of its registration as a Nasdaq index options order entry and/or market maker firm or any other fitting sanction under the Rules of the Association.]

[2878. Transaction Reporting and Other Reporting Requirements]

[(a) All Nasdaq index options participants, upon becoming so registered and qualified, shall have access to, and be required to utilize, the Order Confirmation Transaction (OCT) and Internalized Trade Transaction (ITT) trade reporting systems established by the Association for Nasdaq index options transactions. Such trade reporting systems are designed to “lock-in” all Nasdaq index options transactions. Thus these systems serve trade

comparison and clearing functions as well as trade reporting functions, and require the participation of both the order entry and the market making firms in the reporting process. Because these procedures, which are detailed in the User Guide, vary from those applying to transaction reporting in other Nasdaq securities, it is imperative that all Nasdaq index options participants become familiar with and comply with the provisions of this Rule. Failure on the part of a Nasdaq index options participant to comply with Nasdaq index options reporting provisions may subject participants to censure, fine, suspension or revocation of registration as a Nasdaq index options market maker and/or order entry firm or any other fitting sanction under the Rules of the Association.]

[(b) Order Confirmation Transaction (OCT)--Nasdaq index options order entry firms shall enter an OCT into the Service promptly upon the execution of their order. Upon the acceptance by a market maker of an OCT, the Service shall automatically forward a trade report to the Options Price Reporting Authority (OPRA). Nasdaq index options market makers shall accept an OCT via terminal entry within two minutes as specified by the Association, or the OCT shall be “timed-out,” in which case the Service will notify the order entry firm of the market maker’s non-acceptance of the order. The order entry firm will also be notified if the market maker affirmatively rejects the order via terminal entry. If the market maker wishes to subsequently confirm an OCT which has been timed-out or rejected, a new OCT must be entered into the Service by the order entry firm with a late trade indicator. Once accepted, an OCT may only be canceled or corrected by mutual consent of the market maker and order entry firm.]

[(c) Unsolicited Orders--Nasdaq index options market makers are not obligated to accept an OCT which is unsolicited but, if they choose to do so, must accept the order within two minutes of its receipt as specified by the Association. Upon the acceptance of an unsolicited OCT order by a Nasdaq index options market maker, the system will automatically forward a trade report to OPRA. Once accepted by the market maker, the OCT may only be canceled or corrected with the mutual consent of the market maker and the order entry firm.]

[(d) Internalized Trade Transaction (ITT)--Nasdaq Index Options Service participants shall, where appropriate, enter an ITT message into the Service within two minutes of the execution of an internalized trade. Upon the entry of an ITT message, the Service shall automatically forward a trade report to OPRA. An ITT may be subsequently canceled or corrected by the member.]

[(e) A Nasdaq index options order entry firm shall transmit OCT and ITT for transactions in Nasdaq index options other than cabinet transactions at the price recorded on the trade ticket exclusive of commission, taxes or other charges.]

[(f) Nasdaq index options participants may effect cabinet transactions in any class of options contracts authorized for trading via the Service at a price of \$1.00 per contract, providing such price is reasonably related to the prevailing market for the option. In reporting cabinet transactions, participants shall designate these transactions as such with the appropriate indicator on OCT or ITT entered into the Service. Cabinet transactions will not be disseminated to OPRA but will be reported to OCC for clearance.]

[(g) Weekly and/or Monthly Reports--A member shall report weekly and/or monthly to the Association such data on Nasdaq index options quoted in the Service as the Board of Governors shall require. Such report shall be on a form prescribed by the Association.]

[(h) Trade Tickets--All trade tickets on transactions in Nasdaq index options and authorized underlying securities must indicate the time the order was received and the time the order was executed or canceled.]

[2879. Authorization of Nasdaq Index Option Market Making]

[(a) The Association shall not authorize index option market making in any options series unless, at the time such market making activity is to commence, there are a minimum of five registered Nasdaq index options market makers in the index option.]

[(b) Once market making has commenced in any class of Nasdaq index options, the Association shall withdraw approval of further market making activity with respect to any succeeding options series to be opened in that Nasdaq index option if there are fewer than three registered market makers in the index option.]

[(c) Whenever the Association shall withdraw its approval for index option market making activity in a particular Nasdaq index options series pursuant to paragraph (b) above, it shall not reinstate such market making until the provisions of paragraph (a) above have been satisfied.]

[2880. Nasdaq Index Option Contracts Authorized for Trading]

[The Association may from time to time approve for display on Nasdaq put option contracts and call option contracts in respect of underlying indexes which have been selected

by the Association and approved for trading. All such option contracts shall be designated as to the type of option, the underlying index, the expiration month and the exercise price. Only quotations in respect to option contracts in a class or series of options approved by the Association and currently open for display on the Service may be quoted by a registered Nasdaq index options market maker on the Nasdaq Index Options Service.]

[2881. Series of Nasdaq Index Options for Trading]

[(a) Nasdaq Index Options--After a particular class of index options has been approved for display on the Service and quotation thereon by registered Nasdaq index options market makers, the Association shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options the Association shall fix the expiration month and exercise price of options contracts included in each such series.]

[(1) Expiration Months--At the commencement of trading in a particular class of Nasdaq index options, series of options having three different expiration months will normally be opened. Such expirations shall occur in consecutive months. The first such expiration will occur in the month following the month in which such options are introduced, the second expiration will occur in the month following the first, and the third expiration will occur in the month following the second.

Additional series of index options of the same class may be opened for trading at or about the time a prior series expires and the expiration month of each such series will normally be approximately three months following the opening of such series.]

[(2) Exercise Prices--The procedures for fixing the exercise or strike price of each series of index options opened for trading shall be as follows:]

[(A) Strike prices shall be fixed at an index value which is an integer.]

[(B) Regardless of the value of an index, the interval between strike prices will be \$5.00.]

[(C) New series of index option contracts may be added up to the fifth business day prior to expiration.]

[(D) When new series of index option contracts within a new expiration cycle are opened for trading, two strike prices above and two strike prices below the current index value may be added.]

[(E) When the value of the index underlying a class of index options reaches a strike price, the Association may add one or more additional strike prices such that there are at least two strike prices above and two strike prices below the strike price which has been reached.]

[(F) In unusual market conditions, the Association may add additional series of index option contracts up to three strike prices above and three strike prices below the current index price.]

[(b) Specification Adjustments--The unit of trading and the exercise price initially established for index option contracts of a particular series are subject to adjustment in accordance with the rules of The Options Clearing Corporation. When such adjustment(s) have been determined, announcement thereof shall be made by the Association and, effective

as of the time specified in such announcement, the adjusted unit of trading and the adjusted exercise price shall be applicable with respect to all subsequent transactions in such series.]

[(c) Contract Adjustments--Index option contracts shall be subject to adjustments in accordance with the rules of The Options Clearing Corporation.]

[(d) Puts and Calls--When calls are first opened for trading on an underlying index stock group, the Association may open a series of puts corresponding to each series of calls open or to be opened for trading on the same underlying index stock group.]

[2882. Unit of Trading]

[The unit of trading in each series of options displayed on the Service shall be the unit of trading established by The Options Clearing Corporation pursuant to the rules of The Options Clearing Corporation.]

[2883. Suspension of Authorization of Nasdaq Index Option Contracts]

[(a) The Association shall have the authority to suspend trading in Nasdaq index option contracts by either one or more market maker or all market makers where it deems it necessary and appropriate:]

[(1) to prevent fraudulent and manipulative acts and practices;]

[(2) to promote just and equitable principles of trade; or]

[(3) to prevent excessive speculation and promote the likelihood of a competitive and orderly market.]

[(b) The Association shall suspend trading in Nasdaq index options contracts by all market makers:]

[(1) if the underlying index is not being computed or disseminated; or]

[(2) if trading is halted or suspended in underlying stocks that collectively contribute (A) 20 percent of the current index group value (in the case of index stock groups comprised of more than 50 stocks); and (B) 10 percent of the current index group value (in the case of index stock groups comprised of 50 or fewer stocks).]

[2884. Trade Comparison Procedures for Nasdaq Index Options]

[(a) Scope and Applicability--All transactions in Nasdaq index options shall be reported to the Association pursuant to reporting procedures established by the Association. The Association shall report all compared transactions to The Options Clearing Corporation for clearance and settlement. All compared transactions in Nasdaq options which are cleared and settled through the facilities of The Options Clearing Corporation shall be subject to the rules of The Options Clearing Corporation.]

[(b) Responsibility of Clearing Members--Every member which is a member of The Options Clearing Corporation (a "clearing member") shall be responsible for the clearance and settlement of every Nasdaq index option transaction to which it is a party and for each Nasdaq index option transaction of a member for which it acts as correspondent and/or clearing agent pursuant to agreement. Unless specifically authorized by The Options Clearing Corporation, no member shall be permitted to have more than one such agreement with a clearing member in effect at any time.]

[(c) Reporting of Clearing Information]

[(1) Filing of Trade Information--Each Nasdaq index option participant shall individually report each transaction in a Nasdaq index option, for which it has a responsibility to report, each business day to the Association via OCT or ITT in the manner specified by the Association.]

[(2) (A) The Association will provide each Nasdaq index options participant with the opportunity to review on trade date OCT and ITT transactions to which the participant is a party.]

[(B) All OCT orders which are accepted by the contra party and all ITT which have not been canceled shall be considered to be compared trades, i.e., trades where the trade information agrees as to the identity of the other party to the transaction, the type of option contract, the underlying index, the exercise price, the expiration month, the number of options contracts, the amount of the premium, the designation of the parties as purchaser and writer, respectively, and the trade date, if other than the date of submission.]

[(3) Verification of Nasdaq Index Options Transactions--Each participant shall promptly review each OCT or ITT execution report received and report corrected trade information to the Association as soon as possible, but in any event, not later than the hour which shall be from time to time prescribed by the Association. It shall be the sole responsibility of participants to review the accuracy of all reports promptly upon receipt, and the Association shall not assume any

responsibility for reviewing such reports for accuracy or for making any corrections not reported by a participant.]

[(4) Reporting of Compared Trades to The Options Clearing Corporation--On each business day, at or prior to such time as may be prescribed by The Options Clearing Corporation, the Association shall furnish The Options Clearing Corporation a report of each clearing member's compared trades as reported to the Association on that day. Only those trades which have been confirmed by both parties shall be furnished by the Association to The Options Clearing Corporation, and the Association shall assume no responsibility with respect to any unaccepted order nor for any delays or errors in the reporting of trades.]

[2885. Clearance and Settlement Procedures for Nasdaq Index Options]

[(a) Failure to Pay Premium]

[(1) Whenever The Options Clearing Corporation shall reject a Nasdaq index option transaction because of the failure of a clearing member acting on behalf of the purchaser to pay the premium due thereon as required by the rules of The Options Clearing Corporation, the member acting as or on behalf of the seller (writer) shall have the right either to cancel the transaction by giving notices thereof to the defaulting clearing member or to enter into either a new opening writing transaction or closing sale transaction, as the case may be, in respect of the same Nasdaq index option contract that was the subject of the rejected Nasdaq index option transaction, charging any loss resulting therefrom (including any commissions paid or payable in

connection with such new transaction) to the defaulting clearing member. Such action shall be taken on the day the Nasdaq index option transaction was rejected by The Options Clearing Corporation, unless the Association shall extend such time.]

[(2) In the event the rejected transaction involves a Nasdaq index option contract of a series in which trading has been terminated or suspended before a new Nasdaq index option transaction can be effected to establish the amount of loss, the member acting as or on behalf of the seller shall have a claim against the defaulting clearing member for the amount of the premium due thereon.]

[(b) Index Option Contracts of Suspended Members--When announcement is made of the suspension from membership in the Association of a member, other than a clearing member of The Options Clearing Corporation (a “non-clearing member”), pursuant to the By-Laws of the Association, all open short positions in option contracts of such member and all open positions that are secured in full by a specific deposit or evidenced by an escrow receipt in accordance with the rules of The Options Clearing Corporation, shall be closed out without unnecessary delay by all members carrying such positions for the account of the suspended non-clearing member; provided, however, that upon any such suspension, the Association may, in its discretion and where it determines that such is necessary for the protection of investors, suspend the mandatory close-out provisions hereof and may, in its discretion and where it determines that such is necessary for the protection of investors, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions hereof shall relieve any suspended non-clearing member of

its obligations or of any damages incurred by members carrying positions for the account of such suspended non-clearing member. Should an open short position or an open position resulting from an exercise of an option contract not be closed when required by this Rule, the price for the purpose of determining claims shall be fixed by the price current at the time when such position should have been closed under this Rule. When a member of The Options Clearing Corporation is suspended pursuant to the provisions of the By-Laws, the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.]

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3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a [non-Nasdaq] non-exchange-listed security, as that term is defined in the Rule [6700] 6600 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

(c) through (d) No Change.

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IM-3110. Customer Account Information

(a) Members should be aware that[, effective January 1, 1990,] any transaction [which] that involves a [non-Nasdaq,] non-exchange-listed equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g-1 through 15g-9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) through (i) No Change.

* * * * *

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. If [ADF]NASD closes trading in Nasdaq securities pursuant to its authority under Rule 4633(a)(3) or Rule 4120A(a)[(2)](3), members would not be prohibited from trading through other markets for which trading is not halted.

(b) No Change.

[3350]5100. Short Sale Rule

(a)[(1)] With respect to trades [executed on or] reported to the ADF or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq National Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account [in a Nasdaq National Market security] at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. For the purposes of this rule, the term “customer” includes a non-member broker-dealer.

[(2) With respect to trades executed on or reported to Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security.]

(b) No change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a [qualified] registered market maker [or an ADF market maker] registered in the security [on Nasdaq] in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) No Change.

(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked “long.” [in which the member does not know, or have reason to know, that the beneficial owners of the account have, or would as a result of such sales have, a short position in the security.]

(4) through (7) No Change.

(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights [pursuant to SEC Rule 10b-8] or a standby underwriting commitment.

(9) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as a [Nasdaq or ADF] market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member’s short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) the warrant market maker is a registered [Nasdaq or ADF] market maker for the warrant; and

(B) No Change.

(2) through (4) No Change.

(j) No Change.

(k) Definitions

(1) The term “short sale” shall have the same meaning as contained in SEC Rule [3b-3]200, adopted pursuant to the Act[, reprinted as follows:]

[The term “short sale” means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if: (1) he or his agent has title to it; or (2) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrants to subscribe to it and has exercised such rights or warrants; provided, however, that a person shall be

deemed to own securities only to the extent that he has a net long position in such securities.]

(2) The term “block positioner” shall have the same meaning as contained in SEC Rule 3b-8(c) for “Qualified Block Positioner” adopted pursuant to the Act, [, reprinted as follows:]

[The term “Qualified Block Positioner” means a dealer who: (1) is a broker or dealer registered pursuant to Section 15 of the Act, (2) is subject to and in compliance with Rule 15c3-1, (3) has and maintains minimum net capital, as defined in Rule 15c3-1 of \$1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) he engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such a dealer, as defined in Section 3(a)(18) of the Act, participates) a block of stock with a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.]

[(3) (A) Until February 1, 1996, the term “qualified market maker” shall mean a registered Nasdaq market maker that has maintained, without

interruption, quotations in the subject security for the preceding 20 business days. Notwithstanding the 20-day period specified in this subparagraph, after an offering in a stock has been publicly announced, a registration statement has been filed, or a merger or acquisition involving two issues has been announced, no market maker may register in the stock as a qualified market maker unless it meets the requirements set forth below:]

[(i) For secondary offerings, the offering has become effective and the market maker has been registered in and maintained quotations without interruption in the subject security for 40 calendar days;]

[(ii) For initial public offerings, the market maker may register in the offering and immediately become a qualified market maker; provided however, that if the market maker withdraws on an unexcused basis from the security within the first 20 days of the offering, it shall not be designated as a qualified market maker on any subsequent initial public offerings for the next 10 business days;]

[(iii) After a merger or acquisition involving an exchange of stock has been publicly announced and not yet consummated or terminated, a market maker may immediately register in either or both of the two affected securities as a qualified market maker pursuant to the same-day registration procedures in Rule 4611; provided, however, that if the market maker withdraws on an unexcused basis from any

stock in which it has registered pursuant to this paragraph within 20 days of so registering, it shall not be designated as a qualified market maker pursuant to this subparagraph (3) for any subsequent merger or acquisition announced within three months subsequent to such unexcused withdrawal.]

[(B) For purposes of this subparagraph (3), a market maker will be deemed to have maintained quotations without interruption if the market maker is registered in the security and has continued publication of quotations in the security through Nasdaq on a continuous basis; provided however, that if a market maker is granted an excused withdrawal pursuant to the requirements of Rule 4619, the 20 business day standard will be considered uninterrupted and will be calculated without regard to the period of the excused withdrawal. Beginning February 1, 1996, the term “qualified market maker” shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Rule 4612.]

[(l) This section shall be in effect until December 15, 2005.]

* * * * *

IM-[3350]5100. Short Sale Rule

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities effected otherwise than on an exchange, NASD has adopted an exemption to the Rule for certain market making activity. This exemption [was deemed] is an essential

component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule [3350]5100(c)(1) states that short selling prohibitions shall not apply to sales by [qualified Nasdaq] registered market makers [or registered ADF market makers] in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a [“qualified” Nasdaq] registered market maker [or a registered ADF market maker] and one must engage in “bona fide” market making activity to take advantage of this exemption. With this interpretation, NASD wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule’s application.

(2) through (3) No change.

(b)[(1)] With respect to trades [executed on or] reported to the ADF or the Trade Reporting Facility, Rule [3350] 5100 requires that no member shall effect a short sale in a Nasdaq National Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account [in a Nasdaq National Market security] at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. For purposes of

this rule, the term “customer” includes a non-member broker-dealer. NASD has determined that in order to effect a “legal” short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

[(2) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. Nasdaq has determined that in order to effect a “legal” short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.]

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an “up bid” for the purpose of facilitating a short sale, NASD would consider such activity to be a manipulative act and a violation of NASD’s Short Sale Rule. NASD also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid

above the inside bid and then lower it to create a “down bid” for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid [in The Nasdaq Stock Market or in the ADF] in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule [3350] 5100. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

[(d) Nasdaq calculates changes to the inside bid displayed in the Nasdaq Market Center and disseminates a “bid arrow” via Nasdaq data feeds for market participants to use to comply with Rule 3350 when utilizing the execution functionality of the Nasdaq Market Center. The initial bid arrow each day shall be calculated at market open as follows.]

[(1) For stocks subject to Rule 4709(c), the initial bid arrow after completing the process described in Rule 4709(c)(1) through (3) shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each

quotation update processed by the Nasdaq system after the system begins processing pursuant to Rule 4709(c)(4).]

[(2) For stocks described in Rule 4704(d), the initial bid arrow at the conclusion of the Nasdaq Opening Cross shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the Nasdaq Opening Cross concludes.]

3360. Short-Interest Reporting

(a) Each member shall maintain a record of total “short” positions in all customer and proprietary firm accounts in securities [included in The Nasdaq Stock Market and in each other security] listed on a [registered] national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to NASD in such a manner as may be prescribed by NASD. For the purposes of this rule, the term “customer” includes a broker/dealer. Reports shall be made as of the close of the settlement date designated by NASD. Reports shall be received by NASD no later than the second business day after the reporting settlement date designated by NASD.

(b) No Change.

* * * * *

The 4000 Series is replaced in its entirety by the following proposed rule language.

4000. THE TRADE REPORTING FACILITY

4100. GENERAL

Members may use the Trade Reporting Facility to report transactions executed otherwise than on an exchange in all Nasdaq National Market and Nasdaq SmallCap securities and convertible bonds listed on Nasdaq (“designated securities”). Members that use the Trade Reporting Facility must comply with the Rule 4000 and 6100 Series, as well as all other applicable rules.

4110. Use of Trade Reporting Facility on a Test Basis

NASD may at any time authorize the use of the Trade Reporting Facility on a test basis for whatever studies it considers necessary and appropriate.

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) “Act” means the Securities Exchange Act of 1934.

(2) “Designated securities” means all Nasdaq National Market and Nasdaq SmallCap securities and convertible bonds listed on Nasdaq.

(3) “Listed securities” means securities listed on a national securities exchange.

(4) “Member” means a broker or dealer admitted to NASD membership.

(5) “Market Maker” means an “exchange market maker” or “OTC market maker,” as those terms are defined in Rule 11Ac1-1 of the Act, that is registered in a particular designated security as such with an exchange or a registered securities association or a facility thereof. A member is considered a Market Maker only in those designated securities for which it is registered as such.

(6) “Nasdaq” means the NASDAQ Stock Market, LLC. and its facilities.

(7) “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.

(8) “Nasdaq National Market security” or “NNM security” means any authorized security in the Nasdaq National Market.

(9) “The Nasdaq SmallCap Market” or “SCM” is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Market security.

(10) “Nasdaq SmallCap Market security” or “SCM security” means any authorized security in The Nasdaq SmallCap Market.

(11) “Normal unit of trading” means 100 shares of a security unless, with respect to a particular security, NASD determines that a normal unit of trading shall constitute other than 100 shares.

(12) “Otherwise than on an exchange” means a trade effected by an NASD member otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(13) “Round lot holder” means a holder of a normal unit of trading.

(14) “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.

(15) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

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

(B) the order is executed at the Stop Stock Price or better.

(16) “Trade Reporting Facility Participant” or “Participant” means any member in good standing that uses the Trade Reporting Facility.

4616. Reports

A Trade Reporting Facility Participant shall make such reports to NASD as may be prescribed from time to time by NASD.

4618. Clearance and Settlement

(a) A Trade Reporting Facility Participant shall clear and settle transactions in Nasdaq securities 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 securities may be settled “ex-clearing” provided that both parties to the transaction agree.

4621. Suspension and Termination by NASD Action

NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant’s ability to use Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions.

4622. Termination of Trade Reporting Facility Service

NASD may, upon notice, terminate Trade Reporting Facility service in the event that a Trade Reporting Facility Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered.

4630. Reporting Transactions in Designated Securities

This Rule 4630 Series applies to the reporting by members of transactions in designated securities to the Trade Reporting Facility.

4631. Definitions

Terms used in this Rule 4630 Series shall have the meaning as defined in NASD’s By-Laws and Rules, SEC Rule 11Aa2-1 and 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, unless otherwise defined herein.

4632. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the Trade Reporting Facility last sale reports of transactions in designated securities executed during normal market hours, or if the Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the Operations Department. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to the Trade Reporting Facility Outside Normal Market Hours

(A) Last sale reports of transactions in designated 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 also shall 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.

(B) Last sale reports of transactions in designated 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 be designated as “.T” trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds also shall be designated as .T trades. Transactions not reported before 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.

(C) 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.

(D) 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.

(3) 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 Trade Reporting Facility 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 Trade Reporting Facility, 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 designated 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) The Trade Reporting Facility will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the Trade Reporting Facility that contain the time of execution, but that do not contain the appropriate modifier.

(9) Members shall append the .W trade report modifier to reports of Stop Stock Transactions (as such term is defined in Rule 4200) and include the time at

which the member and the other party agreed to the Stop Stock Price 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, the Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the Trade Reporting Facility more than 90 seconds after execution.

(b) Which Party Reports the Transaction

(1) In transactions between two Market Makers, the member representing the sell side shall report the trade.

(2) In transactions between a Market Maker and a Non-Market Maker, the Market Maker shall report the trade.

(3) In transactions between two Non-Market Makers, the member representing the sell side shall report the trade.

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

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

(c) Information To Be Reported

Each last sale report shall contain the following information:

- (1) Nasdaq symbol of the designated 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, sell short, sell short exempt or cross;
- (5) The time of execution expressed in hours, minutes and seconds based on Eastern Time, unless another provision of NASD rules requires that a different time be included in the report.
- (6) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

(d) Procedures for Reporting Price and Volume

Members that report transactions to the Trade Reporting Facility, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated 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 that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark- up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the

reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

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 39.90 which includes

a \$0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer at 40.10, which includes a

\$0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

Example:

BUY as principal 10,000 shares from a customer at 39.75, which

includes a \$0.25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, 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):

(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.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40
minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting to the Trade
Reporting Facility 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.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) odd-lot transactions;

(2) transactions that 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;

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

(4) 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;

(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.

(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.

(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 that 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.

(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

Members shall report to the Trade Reporting Facility the cancellation of any trade previously submitted to the Trade Reporting Facility. The member responsible for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(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 (g)(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 (g)(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 (g)(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 (g)(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 (g)(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 (g)(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 pursuant to subparagraph (g) 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.

IM-4632-1 Transaction Reporting

NASD emphasizes the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and NASD routinely monitors members' compliance with the 90-second requirement. If NASD finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and the NASD will view noncompliance as a rule violation.

4633. Trading Halts

(a) Authority to Initiate Halts In Trading of Designated Securities on the Trade

Reporting Facility

NASD, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading in a designated security whenever any market that has the authority to call 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 in a designated security when:

(A) extraordinary market activity in the security is occurring, such as 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 believes 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 believes 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 the Trade Reporting Facility to trading activity whenever the Trade Reporting Facility is unable to transmit real-time trade reporting information to the applicable Securities Information Processor. If the Trade Reporting Facility closes trading pursuant to this subparagraph (3), members would not be prohibited from trading through 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) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 4633(a) to initiate a trading halt or close the Trade Reporting Facility, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.

(2) Trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.

4644. Dissemination of Transaction Reports for Convertible Bonds

NASD will collect and process trade reports on all transactions in convertible bonds listed on Nasdaq for surveillance purposes. On a real-time basis, NASD will disseminate to members and the public through the Trade Reporting Facility and through securities information processors transactions in convertible debt listed on Nasdaq equaling 99 bonds or less.

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

4100A. GENERAL

NASD Alternative Display Facility (also referred to as “ADF”) is the facility [to be] operated by NASD on a [nine-month] pilot basis for members that choose to quote or effect trades in Nasdaq National Market and Nasdaq SmallCap securities and convertible bonds listed on Nasdaq [in Nasdaq securities] (“ADF-eligible securities”) otherwise than on [Nasdaq or on] an exchange. The ADF [will] collects and disseminates quotations and trade reports, and compares trades[, and collect and disseminate trade reports]. Those NASD members that [utilize] use ADF systems for quotation or trading activities must comply with the Rule 4000A[, Rule 5400] and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on July 26, 2005.

* * * * *

4120A. Trading Halts

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

NASD, pursuant to the procedures set forth in paragraph (b):

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

- (A) extraordinary market activity in the security is occurring, such as 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 believes 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 believes 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 to quotation activity whenever NASD's Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor. If ADF closes trading pursuant to this subparagraph [(2)](3), members would not be prohibited from trading through 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) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 4120A(a) to initiate a trading halt or close the ADF, the commencement of the trading halt or

closure will be effective simultaneously with appropriate notice [via an administrative message].

(2) Trading [in a halted security] shall resume upon appropriate notice [via an administrative message] that a trading halt or closure is no longer in effect.

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.

(1) through (2) No Change.

(3) "ADF Market Participant" or "Market Participant" means a Registered Reporting ADF Market Maker, or a Registered Reporting ADF ECN.

[(3)](4) "Nasdaq" means the [facilities operated by The Nasdaq Stock Market, Inc.]NASDAQ Stock Market, LLC. and its facilities.

[(4) "Nasdaq market maker" shall have the meaning as defined in Rule 4200.]

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

(6) No Change.

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

(8) No Change.

(9) “Otherwise than on an exchange” means a trade effected by an NASD member otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(9) through (12) renumbered as (10) through (13)

[(13)](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)[and includes forms that are submitted by members to comply with their notification obligations under Rules 4614A, 4619A, and 4623A].

(15) “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.

(16) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

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

(B) the order is executed at the Stop Stock Price or better.

(b) No Change.

4300A. Quote and Order Access Requirements

(a) To ensure that [NASD] ADF Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display 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, [NASD] ADF Market Participants must:

(1) No Change.

(2) Provide NASD member broker-dealers that are not [NASD] ADF Market Participants direct electronic access, if requested, and allow for indirect electronic access, as defined below. In any event, an [NASD] ADF Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their 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) through (4) No Change.

(b) Subject to the terms and conditions contained herein, all [NASD] ADF Market Participants that display quotations in NASD's Alternative Display Facility 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) [NASD] ADF 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 (M) No Change.

The information described in paragraphs (A) through (M) 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), [NASD] ADF 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) 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) through (6) No Change.

(7) Withdrawal of Quotations

If an [NASD] ADF 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 must withdraw its quotations from NASD's Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.

(c) [NASD] ADF Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.

(d) Definitions

(1) No Change.

(2) "Direct electronic access" means the ability to deliver an order for execution directly against an individual [NASD] ADF Market Participant's best bid and offer subject to 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 [NASD] ADF Market Participant's own customer broker-dealers or other active customers or subscribers.

(3) "Indirect electronic access" means the ability to route an order through customer broker-dealers of an [NASD] ADF Market Participant that are not affiliates of [NASD] ADF Market Participant, for execution against NASD Market Participant's best bid and offer subject to 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. [NASD] ADF Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.

[(4)] "NASD Market Participant" means (a) an NASD ADF Registered Reporting Market Maker, (b) an ATS, (c) or an NASD ADF Registered ECN.]

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

[(6)](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) through (f) No Change.

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 [NASD] ADF Market Participant, as defined in Rule 4300A(d)(4), that alleges a denial or limitation of access in contravention of Rule 4300A.

(2) No Change.

(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 [NASD] ADF Market Participant. If the officer determines that there has been a denial of access in contravention of Rule 4300A, the officer shall direct the offending party 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. 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) through (c) No Change.

4600A. TRADING IN NASDAQ SECURITIES

4610A. Registration and Other Requirements

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

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

(b) An NASD member seeking registration as a market maker or ECN in the ADF shall file an application with NASD. 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. [It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing.] A member's registration as an ADF market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.

(c) A [r]Registered [r]Reporting ADF [m]Market [m]Maker or ECN may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. [It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Registered Reporting Nasdaq market maker and is in good standing.]

(d) A market maker's or ECN's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

4612A. Reserved

4613A. Character of Quotations

(a) No Change.

(b) Firm Quotations

(1) An ADF Market Participant [Registered Reporting ADF Market Maker] that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through NASD's Alternative Display Facility at the time of receipt of any such offer. If an ADF Market Participant [Registered Reporting ADF Market Maker] 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, execute a transaction at least at the size displayed.

(2) If an ADF Market Participant [Registered Reporting ADF Market Maker], upon receipt of an offer to buy or sell from another NASD member 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 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 Market Participant [Registered Reporting ADF Market Maker] 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 Market Participant [Registered Reporting ADF Market Maker] 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

An [NASD] ADF Market Participant shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that an [NASD] ADF Market Participant's quotations are no longer reasonably related to the prevailing market, NASD may require the [NASD] ADF Market Participant to re-enter its quotations. If an [NASD] ADF Market Participant whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the [NASD] ADF

Market Participant's quotations in one or all securities. [For the purposes of this paragraph

(c), "NASD Market Participant" shall have the meaning as set forth in Rule 4300A(d)(4).]

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

(2) In the event that an [NASD] ADF Market Participant's ability to enter or update quotations is impaired and the [NASD] ADF Market Participant elects to continue to participate through NASD's Alternative Display Facility, the [NASD] 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) through (3) No Change.

(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) No Change.

(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) through (D) No Change.

(e) No Change.

IM-4613A. Autoquote Policy

(a) No Change.

(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 [Nasdaq] ADF); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order.

* * * * *

4617A. Normal Business Hours

An ADF Market Participant [Registered Reporting ADF 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. An ADF Market Participant [Registered Reporting ADF Market Maker] may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. ADF Market Participants [Registered Reporting ADF Market Makers] whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while 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 [market maker] member shall clear and settle transactions effected on the ADF in Nasdaq 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) No Change.

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

(a) A Registered Reporting ADF Market Maker that wishes to withdraw quotations in a security [or have its quotations identified as the quotations of a passive market maker] shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations. [or identification as a passive market maker. If a Registered Reporting ADF Market Maker also is a Registered Reporting Nasdaq Market Maker, it must obtain excused withdrawal status in both facilities for the same time period.] Withdrawals of quotations [or identifications of quotations as those of a passive market maker] shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.

(b) through (e) No Change.

(f) Excused withdrawal status [or passive market maker status] may be granted to a Registered Reporting ADF Market Maker that is a distribution participant [(]or[, in the case

of excused withdrawal status,] an affiliated purchaser[])] in order to comply with SEC Rule[s] 101[, 103, or 104] 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 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) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a [completed Underwriting Activity Report that includes a] written request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations[, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period].

(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 Operations and that its quotations will be automatically withdrawn [or identified as passive market maker quotations], unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.

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

[(3) If a Registered Reporting ADF Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact

NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraph (a) of this Rule.]

[(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.]

[(5)](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 Operations and the Market Regulation Department of NASD to rescind the excused withdrawal status [or passive market making 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 Market Participant's [Registered Reporting ADF Market Maker's] authority to enter quotations in one or more ADF-eligible [authorized] 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 Data System service in the event that an ADF Market Participant [Registered Reporting ADF Market Maker] fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD.

4623A. Alternative Trading Systems

(a) No Change.

(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 to provide orders to ADF voluntarily shall:

(1) through (3) No Change.

(4) 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), at the highest buy price and the lowest sell price for each Nasdaq 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 Operations as a[n] Registered Reporting ATS or ECN; and

(5) 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 Nasdaq-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 ATS or ECN operating through NASD's Alternative Display Facility 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 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 [Nasdaq] ADF-Eligible Securities

This Rule 4630A Series governs the reporting by members of ADF-eligible securities through NASD's Trade Reporting and Comparison Service ("TRACS"). [The Rule 5400 Series provides the rules for determining which member must report a trade and whether a trade must be reported to TRACS pursuant to this Rule 4630A Series.] Participation in the trade reporting function of TRACS is mandatory for all members that [have a trade reporting obligation through TRACS under the Rule 5400 Series or that] choose to report transactions through TRACS. 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

[Members shall comply with Rule 5430(a) for determining when and how transactions are reported.]

(1) ADF Market Participants and Non-ADF Market Participants 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, last sale reports of transactions in ADF-eligible securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to TRACS Outside Normal Market Hours

(A) Last sale reports of transactions in ADF-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. 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 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 between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 6:30 p.m. Eastern Time on trade date, be designated as “.T” trades to denote their execution outside normal market hours.

(ii) 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, 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.

(b) Which Party Reports Transaction

[Members shall comply with Rule 5430(b) for determining which party reports a transaction.]

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

(2) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(3) In transactions between two 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.

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

(1) No Change.

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

(A) through (G) No Change.

(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include[:

(i)] an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1))];

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.]

(I) Execution time [for any transaction not reported within 90 seconds of execution;]expressed in hours, minutes and seconds based on Eastern Time, 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) Information To Be Reported - - Three Party Trade Reports

(1) No Change

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) through (C) No Change

(D) Execution time expressed in hours, minutes and seconds based on Eastern Time, unless another provision of NASD rules requires that a different time must be included on the report [for any transaction not reported within 90 seconds of execution];

(E) through (F) No Change

(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include[:

(i)]an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report[;

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report].

(e) through (j) No Change.

(k) Transactions Not To Be Reported To NASD

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

(1) through (5) No Change.

(6) transactions reported on or through an exchange.

(l) No Change.

5000. [OTHER NASDAQ AND NASD MARKETS] TRADING OTHERWISE THAN ON AN EXCHANGE

Members are required to report transactions in exchange-listed securities effected otherwise than on or through a national securities exchange to NASD through either the Trade Reporting Facility, pursuant to the Rule 4000 and 6000 Series, or the ADF, pursuant to the Rule 4000A and 6000A Series. For purposes of the 5000 Series, “otherwise than on an exchange” means a trade effected by an NASD member otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

[5100. NASDAQ INTERNATIONAL SERVICE RULES]

[5101. Applicability]

[(a) These Rules shall be known as the “International Rules” and govern operation of the Nasdaq International Service (“Nasdaq International” or “Service”), as well as the

obligations, access to and use of the Service by the following parties: broker/dealers admitted to membership in the Association (collectively, “Association members”); associated persons of such Association members; and any non-member broker/dealer having the status of an approved affiliate. Unless otherwise indicated, the requirements of the International Rules are in addition to those contained in the By-Laws and other Rules of the Association.]

[(b) Rules 5106, 5108, 5109, and 5112 of the International Rules establish requirements that apply exclusively to participation in the Service during the European Session. As such, these provisions of the International Rules supersede the Rule 2870, 4640, 6300 and 6600 Series; and Rules 6410, 6420 and 6450. Non-compliance with any applicable requirement will subject the Association member and/or its associated person(s) to regulatory action under the Association’s Code of Procedure, the Rule 9000 Series.]

[(c) Unless otherwise indicated within a particular provision of the International Rules, all procedures, requirements, and prohibitions shall apply with equal force to Association members, their associated persons, and approved affiliates that participate in the Service.]

[5102. Definitions]

[Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws and other Rules of the Association.]

[(a) “Approved affiliate” means a broker/dealer that meets all of the following requirements:]

[(1) it is not admitted to membership in the Association or any registered national securities exchange;]

[(2) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986;]

[(3) it controls, is controlled by, or is under common control with an Association member (hereinafter referred to as a “control relationship”); and]

[(4) it has been approved by the Association to participate as a Service market maker, in an agency capacity, on behalf of the Association member with whom it has a control relationship.]

[(b) “Domestic Session” refers to the market session operated by the Association between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each U.S. business day.]

[(c) “European-only market maker” means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.]

[(d) “European Session” refers to the market session supported by the Service during the hours specified in Rule 5103.]

[(e) “International market maker” means a broker/dealer that is registered with the Association to make markets in one or more qualified securities in the SERVICE and is also registered with the Association to make markets in the same security(ies) during the Domestic Session.]

[(f) The terms “Nasdaq International” and “Service” refer to an extension of the basic automation capabilities that support Association members’ market making in the Nasdaq National Market (NNM), and exchange-listed securities to the business hours fixed by Rule 5103.]

[(g) “Non-NNM security” means every qualified security in the subset defined by Rule 5104(b).]

[(h) “Qualified security” means any security that satisfies the requirements contained in Rule 5104.]

[(i) “Service market maker” includes any Association member that is registered as a European-only or International market maker in one or more qualified securities, and any approved affiliate registered as a European-only market maker in one or more qualified securities.]

[5103. Normal Business Hours]

[The Nasdaq International market session (hereinafter referred to as the “European Session”) will run from 3:30 a.m. to 9:00 a.m. Eastern Time on each business day in the U.S.; pre-opening procedures will commence at 2:30 a.m. Eastern Time. Appropriate adjustments will be made in the event that the U.S. and the U.K. move to (or from) daylight-saving time on different dates. All times referenced in the International Rules relate to the Eastern Time zone of the U.S.]

[5104. Qualified Securities]

[The Association deems the following classes of securities qualified for inclusion in Nasdaq International:]

[(a) any Nasdaq security that is designated an NNM security;]

[(b) any non-Canadian, foreign security or ADR that is included in Nasdaq but not designated an NNM security; and]

[(c) any equity security that is listed on a registered national securities exchange.]

[Inclusion of a qualified security in Nasdaq International requires a market making commitment by one or more broker/dealers that participate as Service market makers.]

[5105. Access]

[(a) Access to the market making capabilities provided by Nasdaq International is restricted to broker/dealers that are either Association members or approved affiliates and that have all equipment and communication lines specified by the Association for receipt of Nasdaq Workstation Service. Additionally, Association members that participate as Service market makers, either directly or through the agency of an approved affiliate, must satisfy the same financial and operational requirements applicable to market makers in Nasdaq securities and/or exchange-listed securities traded off-board during the Domestic Session.]

[(b) Association members that utilize Nasdaq Workstation units to receive Level 2 Nasdaq Service during the Domestic Session can also receive real-time quotation information entered by Service market makers. Similar access terms will be provided to non-member, Level 2 subscribers utilizing Nasdaq Workstation units.]

[5106. Requirements Applicable to Market Makers]

[(a) Service Market Maker]

[Association members and approved affiliates can function as Service market makers by registering with the Association in one or more qualified securities. Two classifications of market makers are authorized: (1) European-only and (2) International. Association members can register in either capacity in any qualified security; approved affiliates are limited to European- only registration. At the time of registration, a Service market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9:00 a.m.; 5:30 a.m. to 9:00 a.m., and 7:30 a.m. to 9:00 a.m. Every Service market maker must fulfill the market making obligations specified below in each of its registered securities while participating in the European Session. Based on experience gained with Service market makers' use of the multiple openings, the Association may determine to alter the specified times by up to one hour or to eliminate an opening altogether.]

[(b) Market Maker Obligations]

[The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.]

[(1) Registration]

[(A) Quotations and quotation size may be entered into the Service only by a Service market maker.]

[(B) To function as a Service market maker, an Association member must initially obtain registration as a European-only or International market

maker by filing an application with the Association. The application shall certify the Association member's good standing with the Association, demonstrate compliance with the net capital and other financial responsibility provisions of the Act and the rules thereunder, and specify the qualified security(ies) in which the member is seeking to register as a European-only or International market maker. Initial registration as a Service market maker shall become effective upon the member's receipt of the Association's notice approving such registration.]

[(C) For an approved affiliate to function as a Service market maker, it must initially obtain registration as a European-only market maker by filing an application with the Association. Such application must be co-signed by a registered principal of the Association member for whom the approved affiliate will act as agent. The application shall certify the following: the Association member's good standing with the Association; the approved affiliate's authorization to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act of 1986; and the Association member's ability to comply and its assumption of compliance with the net capital and other financial responsibility requirements of the Act and the rules thereunder in respect of the approved affiliate's market making in the Service as agent for the Association member. The application shall also specify the qualified security(ies) in which the approved

affiliate is seeking to register as a European-only market maker. Initial registration as a Service market maker shall become effective upon the approved affiliate's receipt of the Association's notice approving such registration.]

[(D) A Service market maker may become registered in a newly qualified security by telephoning Market Operations. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.]

[(E) A Service market maker may register in additional qualified securities by entering a registration request via its Nasdaq Workstation unit authorized for receipt of the Service. If registration is requested respecting a security that has been a qualified security for more than five (5) days, and the requirements of either subparagraph (B) or (C) above are satisfied, registration shall take effect on the day after the registration request is entered.]

[(F) Registration in a qualified security shall be terminated by the Association if the Service market maker fails to enter quotations in that security within five (5) business days after its registration in that security first became effective.]

[(2) Normal Business Hours]

[Service market makers must be open for business, on each U.S. business day, during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a Service market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9:00 a.m. segment and others during the 7:30 a.m. to 9:00 a.m. segment. This flexibility is equally available to Association members and approved affiliates that participate as Service market makers. Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight savings time on different dates.]

[(3) Character of Quotations]

[(A) For each security in which an Association member has registered as a Service market maker, it 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 in the Service during the hours specified above in subparagraph (2), above, subject to the procedures for excused withdrawal set forth in subparagraph (4) below. An approved affiliate registered as a Service market maker shall assume identical obligations in each of its registered securities. Purchases and sales effected to fulfill those obligations shall be deemed to be made for the account of the Association member on whose behalf the approved affiliate acts as agent.]

[(B) A Service market maker that receives an offer to buy or sell from another Association member or approved affiliate shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the Service at the time of receipt of any such offer. If a Service market maker 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 Association member or approved affiliate, execute a transaction at least at the size displayed.]

[(C) A Service market maker shall enter and maintain quotations that are reasonably related to the prevailing market. If it appears that such market maker's quotations are no longer reasonably related to the prevailing market, the Association may require the firm to re-enter its quotations. However, if that Service market maker fails to re-enter its quotations, the Association may suspend the market maker's quotations in one or all of the qualified securities in which it is registered.]

[(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Market Operations to request the withdrawal of its quotations.]

[(E) If a Service market maker's ability to enter or update quotations is impaired and it elects to remain in the Service, the market maker shall

execute an offer to buy or sell received from another Association member or approved affiliate at its quotations as disseminated through the Service.]

[(F) A Service market maker should refrain from entering quotations into the Service that exceed the guidelines for maximum allowable spreads set forth below:]

[SPREAD GUIDELINES]

[Average Spread]	[Maximum Allowable Spread]
[1/8 or less]	[¼]
[¼]	[½]
[3/8]	[¾]
[½]	[1]
[5/8]	[1]
[¾]	[1 ½]
[7/8]	[1 ½]
[1]	[1 ½]
[1 1/8]	[1 5/8]
[1 ¼]	[1 ¾]
[1 3/8]	[1 7/8]
[1 ½]	[2]
[1 5/8]	[2]

[1 ¾]	[3]
[1 7/8]	[3]
[2]	[3]
[2 1/8]	[3]
[2 ¼]	[3]
[2 3/8]	[3]
[2 ½]	[3]
[2 5/8]	[4]
[2 ¾]	[4]
[2 7/8]	[4]

[For an average spread of 3 or more, the maximum allowable spread is 125 percent of the average spread rounded to the next highest whole number.]

[The Association regards these spread parameters as guidelines rather than absolute requirements. Nonetheless, the Association will continuously monitor the quotation spreads of every Service market maker and consider taking regulatory action upon finding a pattern of excessive spreads disseminated during European Sessions. A pattern of excessive spreads will be deemed to exist where a Service market maker exceeds the applicable guideline on five or more occasions in the same qualified security during a calendar month or exceeds the applicable guideline respecting at least 10% of its quotation updates entered into the Service during a calendar month.]

[(G) A Service market maker shall not, except under extraordinary circumstances, enter or maintain quotations in the Service during the European Session if: the bid quotation entered is equal to or greater than the asked quotation of another Service market maker displaying quotations in the same qualified security; or the asked quotation is equal to or less than the bid quotation of another Service market maker displaying quotations in the same qualified security.]

[(H) A Service market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all Service market makers whose quotations would be locked or crossed. A Service market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through the Service at the time of receipt of any order.]

[(4) Withdrawal of Quotations]

[(A) A Service market maker that wishes to withdraw its quotations in a qualified security shall contact MarketWatch to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by MarketWatch only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.]

[(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by MarketWatch. 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 written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation™ units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.]

[(C) Excused withdrawal status may be granted to a Service market maker that fails to maintain a clearing arrangement with a registered clearing

agency or with another party that is a member of such an agency and is therefore withdrawn from participation in the Association's Automated Confirmation Transaction Service. However, if the Association finds that the Service market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be deemed a voluntary termination pursuant to subparagraph (5) below.]

[(5) Voluntary Termination of Registration]

[A Service market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the Service. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the Service in accord with procedures contained in paragraph (b)(1)(E) above. Nonetheless, if an International market maker voluntarily terminates both the domestic and European components of its registration in a qualified security that is included in Nasdaq (qualified Nasdaq security), this Association member cannot re-register to quote that qualified Nasdaq security during the Domestic Session until twenty (20) business days have elapsed. This waiting period would not apply where an International market maker in a qualified Nasdaq security had terminated the European component of its registration but maintained the domestic component.]

[(6) Stabilizing Bids]

[(A) A Service market maker may enter a stabilizing bid in the Service for a qualified Nasdaq security, which bid will be identified with the appropriate identifier on the quotation display. Only one market maker in an issue may enter a stabilizing bid. A stabilizing bid will not be displayed unless one market maker in addition to the market maker entering the stabilizing bid is registered in the issue and enters quotations during the European Session.]

[(B) A stabilizing bid, a pre-effective stabilizing bid, or a penalty bid may be entered into the Service. A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.]

[(C) Notice to the Association]

[(i) A Service market maker that wishes to enter a stabilizing bid shall so notify MarketWatch in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.]

[(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.]

[(iii) A service market maker that has provided the written notice prescribed above shall also contact MarketWatch for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.]

[(D) A Service market maker shall not enter a stabilizing bid at the same time that it is quoting any other bid or offer in the qualified Nasdaq security.]

[(E) A Service market maker entering a stabilizing bid shall report all purchases made on the stabilizing bid and enter “zero volume” for sales during the period in which the stabilizing bid is in effect.]

[5107. Automated Submission of Trading Data]

[RESERVED FOR FUTURE USE. REDESIGNATED AS 8212 BY SR-NASD-97-81 EFF. JAN. 16, 1998.]

[5108. Reports]

[Every Association member and approved affiliate that functions as a Service market maker shall submit the following reports to the Association at the frequency specified:]

[(a) A Service market maker shall report each business day any data relating to qualified securities quoted in the Service as the Association shall require.]

[(b) A Service market maker shall report monthly such data on qualified securities that are quoted in the Service as the Association shall require.]

[(c) A Service market maker shall make such other reports as the Association may prescribe from time to time.]

[5109. Clearance and Settlement of International Transactions]

[(a) Association members and approved affiliates that effect international transactions must clear and settle all such transactions through a clearing agency registered with the Commission that uses a continuous net settlement system. This requirement may be satisfied through direct participation in a suitable clearing agency or through a clearing arrangement with another party.]

[(b) For purposes of this Rule, the term “international transaction” means every transaction having the following three characteristics: (1) the transaction involves a qualified security quoted in the Service by at least one registered market maker; (2) the transaction is consummated during the hours of the European Session between two Association members, two approved affiliates, or an Association member and an approved affiliate; and (3) the transaction involves at least one Association member (acting in a principal or agency capacity) that is registered as a European- only or International market maker in any

qualified security, or alternatively, at least one approved affiliate (acting in a principal or agency capacity) that is registered as a European-only market maker in any qualified security.]

[(c) Participation in the Automated Confirmation Transaction Service is mandatory for self-clearing Association members participating in the Service directly or through an approved affiliate.]

[5110. Suspension and Termination of Quotations by Association Action]

[The Association may, pursuant to the procedures set forth in the Association Code of Procedure, the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Service market maker's authority to enter quotations in one or more qualified securities for violations of the applicable requirements or prohibitions contained in the By-Laws or Rules of the Association.]

[5111. Termination of Access]

[The Association may, upon notice, terminate access to Nasdaq International in the event that a Service market maker fails to qualify under specified standards of eligibility for Association membership or participation in the Service, or fails to pay promptly for services rendered by the Association or its subsidiaries.]

[5112. Transaction Reporting Requirements]

[During the European Session, broker/dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to the Association on qualified securities quoted in Nasdaq International:]

[(a) Definitions]

[(1) “International Participant” includes any Association member registered as an International or European-only market maker in at least one qualified security, and any approved affiliate registered as a European-only market maker in at least one qualified security.]

[(2) “Reportable transaction” means any round-lot or mixed-lot transaction in a Service security effected during the European Session with an International Participant being on one or both sides. The following are not deemed to be reportable transactions:]

[(A) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than shelf registrations) or of an unregistered secondary distribution;]

[(B) transactions executed on and reported to a securities exchange domiciled outside the U.S.;]

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

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

[(E) purchases or sales of Service 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 preestablished consideration unrelated to the current market.]

[(3) “Service security” means any qualified security that is quoted in Nasdaq International by at least one registered market maker.]

[(4) “Trade report” refers to the entry of the following elements of information for each reportable transaction: security symbol, price (exclusive of commission, mark-up, or mark-down), volume, and a symbol indicating whether the transaction is a buy, sell or cross.]

[(b) Timely Trade Reports]

[International Participants shall enter trade reports on all reportable transactions within three minutes of execution via a Nasdaq Workstation unit authorized for receipt of Nasdaq International or through a CTCI. Trade reports not submitted within three minutes of execution shall be designated as late by addition of the “SLD” indicator. 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 of the Association’s Rules.]

[(c) Obligation to Submit Trade Reports on Reportable Transactions]

[(1) In transactions between two International Participants that are both Service market makers in the affected Service security, only the party representing the sell side shall report.]

[(2) In transactions between two International Participants where only one is a Service market maker in the affected Service security, the latter party shall report.]

[(3) In transactions between two International Participants where neither is a Service market maker in the affected Service security, only the party representing the sell side shall report.]

[(4) In transactions between an International Participant and a non-member (other than an approved affiliate), the International Participant shall report. Where an International Participant acts as a dual agent in a reportable transaction, it shall be reported only once by the International Participant.]

[(5) In transactions between an International Participant and another Association member that is not an International Participant, only the International Participant shall report.]

[(d) Aggregation of Trade Reports]

[(1) The following procedures and requirements apply exclusively to an International Participant registered as a Service market maker in a particular Service security.]

[(2) Under the following conditions, individual trade reports in a Service security at the same price may be aggregated into a single trade report by a Service market maker in that security:]

[(A) orders received prior to opening of the European Session and simultaneously executed at the opening;]

[(B) orders received during a trading halt and executed simultaneously when trading resumes;]

[(C) orders relayed to the trading department of the Service market maker for simultaneous execution at the same price;]

[(D) simultaneous executions by the Service market maker of customer transactions at the same price, e.g., multiple limit orders being executed at the same time when a limit price has been reached; or]

[(E) orders received or initiated by the Service market maker that are impractical to report individually and are executed at the same price within two minutes of execution of the initial transaction; provided, however, that no individual order of 10,000 shares or more may be aggregated in a trade report and that the aggregated trade report shall be made within three minutes of the initial execution reported therein.]

[(3) In no instance shall a Service market maker delay entry of its opening quotations or resumption of trading in a Service security for the purpose of aggregating trade reports. Further, a Service market maker is prohibited from withholding a trade report in anticipation of aggregating the transaction with others.]

[(4) A Service market maker shall identify aggregated trade reports and the underlying order tickets in a manner prescribed by the Association.]

[(e) Time Stamping of Transactions]

[All trade tickets for reportable transactions shall be time-stamped at the time of execution. Association members and approved affiliates that utilize screen-based systems for executing transactions shall satisfy this requirement by ensuring that such a system assigns an appropriate execution time to each reportable transaction.]

[(f) Weekly Reports]

[International Participants shall submit trade reports weekly respecting Service securities in the following circumstances:]

[(1) European-only market makers. Transactions in Service securities executed outside hours of the European Session;]

[(2) International market makers. Transactions in Service securities executed outside the hours of both the European Session and the Domestic Session;]

[(3) European-only and International Market Makers. Transactions in Service securities that were effected during the European Session and were omitted inadvertently from reported volume during the preceding week's European Sessions.]

[5113. Audit Trail Requirements]

[All existing requirements for submitting audit trail information to the Association, either directly or through a registered clearing agency, shall extend to Association members'/approved affiliates' participation in Nasdaq International. The applicable requirements were published in NASD Notices to Members 84-55 (October 15, 1984), 85-24 (April 12, 1985), and 85-72 (October 30, 1985), which notices are hereby incorporated by reference.]

[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 ATSS

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]
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[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 represents 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 commencing September 1, 2004, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.]

[(c) ITS/CAES market makers that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (b) of this rule are subject to the same rules applicable to the ITS/CAES market maker's first quotation, with two exceptions: (1) the continuous two-sided quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well

as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to ITS/CAES market makers' Supplemental MPIDs; and (2) Supplemental MPIDs may not be used by ITS/CAES market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.]

[IM-5266-1. Procedures For Allocation of Second Displayable MPIDs]

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

[As described in Rule 5266, Nasdaq will automatically designate an ITS/CAES market maker's first MPID as a "Primary MPID" and any additional MPIDs as "Supplemental MPIDs." ITS/CAES market makers are required to use their Primary MPID in accordance with the requirements of a Primary MPID for listed securities. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and SEC rules governing the trading of these securities — including the Intermarket System Plan and the Rule 5200 and 6300 Series. The multiple MPID for exchange-listed securities program creates no exceptions to these obligations. ITS/CAES market makers may also use Supplemental MPIDs to enter non-attributable orders into SIZE.]

[Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to ITS/CAES market makers' use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that one or more Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if an ITS/CAES market maker no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.]

[The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental MPID is that each ITS/CAES market maker should be permitted to register to display a single quotation in a security under a Primary MPID before any is permitted to register to display additional quotations under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental MPIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for ITS/CAES market makers that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to ITS/CAES market makers requesting Primary MPIDs and then receives additional requests for Primary MPIDs,

it will use the procedure described below to re-allocate display privileges to ITS/CAES market makers requesting Primary MPIDs.]

[For any stock in which Nasdaq has reached the maximum number of ITS/CAES market makers registered to display quotations, once each month, Nasdaq will rank each of the ITS/CAES market makers that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that ITS/CAES market maker's least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental 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.]

5200. Transactions Related to Initial Public Offerings

No member or person associated with a member shall execute or cause to be executed, directly or indirectly, a transaction otherwise than on an exchange 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.

5300. Reserved

6700. Transaction Reporting in [The] PORTAL[®] [Market] Securities

[53]6710. Definitions

For purposes of the PORTAL[®] [Market] Rules, unless the context requires otherwise:

(a) [“Association” means the National Association of Securities Dealers, Inc. (Association) or its wholly-owned subsidiary, The Nasdaq Stock Market, Inc., as determined by the Association.]

[(b)]“Exchange Act” or “Act” means the Securities Exchange Act of 1934, as amended from time to time.

[(c)](b) “PORTAL[®]” or “PORTAL Market” means [the Association’s] Nasdaq’s market for designated foreign and domestic securities that are eligible for resale under SEC Rule 144A.

[(d)](c) “PORTAL equity security” means a PORTAL security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or

the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable).

[(e)](d) “PORTAL debt security” means PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage or asset backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.

[(f)](e) “PORTAL Market system” or “PORTAL system” means any computer system(s) designated by NASD [the Association] to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, or other information on PORTAL securities.

[(g)] “PORTAL Rules” or “PORTAL Market Rules” means the PORTAL Market rules as included in the Rule 5000 Series.]

[(h)](f) “PORTAL security” means a security that is currently designated by the [Association] Nasdaq Stock Market for inclusion in the PORTAL Market[pursuant to the Rule 5320 Series].

[(i)](g) “PORTAL transaction report” means a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL [Market] system.

[(j)](h) “Restricted security” means a security that meets the definition of that term contained in SEC Rule 144(a)(3) under the Securities Act. A PORTAL security continues to

be a restricted security even though it is eligible to be resold pursuant to the provisions of SEC Rule 144, including SEC Rule 144(k), but has not been so resold.

[(k)](i) “SEC” means the United States Securities and Exchange Commission.

[(l)](j) “SEC Rule 144A” means SEC Rule 144A adopted under the Securities Act, as amended from time to time.

[(m)](k) “Securities Act” means the Securities Act of 1933, as amended from time to time.

[(n)](l) “Time of execution” means the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

[(o)](m) “Transaction” or “trade” means the purchase or sale of a PORTAL security.

[(p)](n) “United States” or “U.S.” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

[53]6720. Reserved [Requirements Applicable to PORTAL Securities]

[5321. Application for Designation]

[(a)] Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by the issuer or any member of the Association.

Applications may be made with or without the concurrence of the issuer. The application

shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322 and provides the undertakings required by subparagraph (c) hereof].

[(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.]

[(c) An applicant that submits application for designation of a security as a PORTAL security (or the issuer of the security if the applicant is a member) under subparagraph (a) above shall undertake to promptly advise the Association:]

[(1) that the issuer has submitted to the SEC a registration statement to register the resale of the PORTAL security, securities to be exchanged for the PORTAL security, or securities into which the PORTAL security is exchangeable or convertible;]

[(2) the effective date of a registration statement submitted to the SEC with respect to a PORTAL security, as described in subparagraph (1) hereof; and]

[(3) of the assignment of any CUSIP or CINS security identification to the PORTAL security or any tranche of a PORTAL security issue.]

[5322. Qualification Requirements for PORTAL Securities]

[(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:]

[(1) be:]

[(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or]

[(B) a security that upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering; provided, however, that if the security is a depositary receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;]

[(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;]

[(3) be in negotiable form, be a depositary eligible security as defined in paragraph (d) of Rule 11310, and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any member;]

[(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class which do not satisfy paragraph (a)(1)(B); and]

[(5) satisfy such additional criteria or requirements as the Association may prescribe.]

[(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.]

[5323. Suspension or Termination of a PORTAL Security Designation]

[(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:]

[(1) the security is not in compliance with the requirements of the PORTAL Rules;]

[(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;]

[(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or]

[(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of members or the Association.]

[(b) The Association will promptly notify members of the suspension or termination of a security's designation as a PORTAL security through the designated PORTAL Market system through which the security is reported. Suspension or termination shall become

effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.]

[(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.]

[5324. Review of Denial, Suspension or Termination of a PORTAL Security]

[A determination by the Association to deny, suspend or terminate the designation of a PORTAL security may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule 4800 Series.]

[5325. PORTAL Entry Fees]

[When an issuer or member submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of \$2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus \$200.00 per assigned security symbol that is in addition to the first symbol assigned.]

[53]6730. Requirements Applicable to NASD Members [of the Association]

[53]6731. Limitations on Transactions in PORTAL Securities

(a) No member shall sell a PORTAL security unless:

(1) the sale is to:

(A) an investor or member that the member reasonably believes is a “qualified institutional buyer” in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Rule 144A; or

(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

[53]6732. Reporting Debt and Equity Transactions in PORTAL Securities

(a) Transactions in a PORTAL equity security shall be reported to the [Nasdaq Market Center] OTC Reporting Facility in accordance with this Rule[, except for transactions meeting the requirements of subparagraphs (e)(1)–(4) of Rule 6230]. Each PORTAL transaction report on a PORTAL equity security shall:

(1) include the information required by paragraph (d) of Rule 6130, including the time of execution;

(2) be submitted to the [Nasdaq Market Center] OTC Reporting Facility no later than 6:30 p.m. Eastern Time (or the end of the [Nasdaq Market Center] OTC Reporting Facility reporting session that is in effect at that time); and

(3) be submitted by the party as required by paragraph (c) of Rule 6130.

(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And [Comparison Entry] Compliance Engine Service in accordance with the Rule 6200 Series.

(c) The reporting requirements of this Rule shall apply to transactions in reliance on SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

(d) Members that submit PORTAL transaction reports shall be subject to any fees imposed by the particular PORTAL [Market] system through which the PORTAL transaction report is submitted, as set forth in the Rule 7000 Series.

[53]6733. Quotations in PORTAL Securities

Members shall not enter a quotation with respect to any PORTAL security in a PORTAL Market system, electronic communication network (as defined in SEC Rule 11Ac-1-(a)(8)), or other interdealer quotation system.

[53]6740. Arbitration

The facilities of [the Association's Arbitration Department] NASD Dispute Resolution, Inc., and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

[53]6750. Rules of the Association

(a) The following NASD Rules [of the Association]and Interpretative Material there under are specifically applicable to transactions and business activities relating to PORTAL securities:

- (1) Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 3370, and 8210;
- (2) the Rule 8100 and Rule 8300 Series; and
- (3) IM-2310-2, IM-2420-1, IM-2440, IM-3310, and IM-3320.

(b) The following NASD rules [of the Association]and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

- (1) Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;
- (2) Rule 2330, except for paragraph (d); and
- (3) Rule 3110, except paragraph (b)(2).

(c) The following NASD Rules [of the Association]are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

- (1) Rules 0111, 0112, 0120, and 0121.
- (2) Rules 2210, 3020, 3030, [3040,] 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following NASD Rules [of the Association]and Interpretative Material thereunder are not applicable to transactions and business activities relating to PORTAL securities:

(1) Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2790, 2810, 2820, 2830, 2860, 3210, and 3360.

5400. [Nasdaq Stock Market and Alternative Display Facility Trade Reporting] Reserved
[5410. Applicability]

[(a) For a period of time, NASD will operate two facilities for collecting trade reports for executions in Nasdaq National Market, Nasdaq SmallCap Market, and Nasdaq Convertible Debt securities (“designated securities”): The Nasdaq Stock Market and the Alternative Display Facility (“ADF”). Nasdaq will operate the Nasdaq Market Center (including its trade reporting service), and NASD, through the ADF, will operate Trade Reporting and Comparison Service (“TRACS”). This Rule 5400 Series establishes the rules for determining which member must report a trade and whether a trade must be reported to the Nasdaq Market Center, pursuant to the Rule 4630, 4640, 4650 and 6100 Series or TRACS, pursuant to the Rule 4630A and 6100A Series.]

[(b) The requirements of this Rule 5400 Series are in addition to the trade reporting requirements contained in Rule Series 4630, 4640, 4650, 6100, 4630A and 6100A Series, and Rule 4720.]

[5420. Definitions]

[(a) Terms used in this Rule 5400 Series shall have the meaning as defined in the NASD's By-Laws and Rules, SEC Rule 11Aa3-1, and 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, unless otherwise defined herein.]

[(b) Reserved]

[(c) "Registered Reporting Nasdaq Market Maker" means a member of NASD that is registered as a Nasdaq market maker in a particular designated security. A member is a Registered Reporting Nasdaq Market Maker in only those designated securities for which it is registered as a Nasdaq market maker. A member shall cease being a Registered Reporting Nasdaq Market Maker in a designated 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 NASD.]

[(d) "Non-Registered Reporting Member" means a member of NASD that is not a Registered Reporting Nasdaq Market Maker nor a Registered Reporting ADF Market Maker.]

[(e) "Registered Reporting ADF Market Maker" means a member of NASD that is registered as an Alternative Display Facility ("ADF") market maker in a particular designated security. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker 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.]

[(f) “Trade Reporting and Comparison Service” or “TRACS” is the service offered to those members that participate in the ADF that accommodates last sale reporting and dissemination and trade comparison of transactions in designated securities.]

[(g) “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.]

[(h) “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 will be executed at a Stop Stock Price or better; and]

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

[5430. Transaction Reporting]

[(a) When and How Transactions are Reported]

[(1) Registered Reporting Nasdaq Market Makers and Registered Reporting ADF Market Makers shall, within 90 seconds after execution, transmit last sale reports of transactions in designated securities executed during normal market hours.

Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.]

[(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to the Nasdaq Market Center or TRACS, as applicable, or if the Nasdaq Market Center or TRACS is unavailable due to system or transmission failure, by telephone to Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours.

Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.]

[(3) Non-Registered Reporting Members shall report weekly to the Market Operations Department, on a form designated by the Board of Governors, last sale reports of transactions in designated securities which are not required to be reported under subparagraph (2) or (4).]

[(4) Transaction Reporting to the Nasdaq Market Center Outside Normal Market Hours]

[(A) Last sale reports of transactions in designated 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 be designated as .T trades, and include the time of execution.

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, and include the time of execution.^{1]}

[¹ Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an “as/of basis,” and include the time of execution, last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[(B) Last sale reports of transactions in designated 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 be designated as “.T” trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall be designated as .T trades, and include the time of execution. Transactions not reported before 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.]

[(C) 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, and include the time of execution.

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, and include the time of execution.^{2]}

[² Until Nasdaq implements the use of the .ST modifier, which denotes the late reporting of a pre-opening or after-hours trade, members shall report on the following day on an “as/of basis” last sale reports of transactions in designated securities executed between midnight and 8:00 a.m. Eastern Time that are not reported to the Nasdaq Market Center prior to 9:30 a.m. These reports shall include the time of execution.]

[(D) 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 and include the time of execution.]

[(5) Transaction Reporting to TRACS Outside Normal Market Hours]

[(A) Last sale reports of transactions in designated 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. Additionally, last sale reports of transactions in designated 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; 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 must include the time of execution on the trade report.]

[(B) Last sale reports of transactions in designated securities executed 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 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, be designated as “.T” trades to denote their execution outside normal market hours, and be accompanied by the time of execution.]

[(ii) 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, be designated “as/of” trades to denote their execution on a prior day, and be accompanied by the time of execution.]

[(6) 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 or 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 the Nasdaq Market Center or TRACS, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.]

[(7) All members shall append the .W trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae. Members reporting transactions to the Nasdaq Market Center with the .W modifier shall also include the time of execution on the transaction report.]

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

[(9) 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.]

[(10) 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) 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.]

[(12) Members shall append the .W trade report modifier to reports of Stop Stock Transactions (as such term is defined in Rule 5420) 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 5420) 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. The requirements of this paragraph apply only to reports submitted to the Nasdaq Market Center.]

[(13) To identify pre-opening and after-hours trades reported late, Nasdaq will convert the .T modifier to .ST for any report submitted to the Nasdaq Market Center more than 90 seconds after execution.³]

[³ Nasdaq expects to implement use of the .ST modifier for Nasdaq listed securities in the fourth quarter of 2004, and will issue a notice of the exact implementation date.]

[(b) Which Party Reports Transaction and to Which Facility]

[(1) In transactions between two Registered Reporting Nasdaq Market Makers, the member representing the sell side shall report the trade to the Nasdaq Market Center.]

[(2) In transactions between a Registered Reporting Nasdaq Market Maker and a Non-Registered Reporting Member, the Registered Reporting Nasdaq Market Maker shall report the trade to the Nasdaq Market Center.]

[(3) In transactions between two Non-Registered Reporting Members, the member representing the sell side shall report the trade to the Nasdaq Market Center or TRACS.]

[(4) In transactions between a member and a customer, the member shall report as follows:]

[(A) A Registered Reporting Nasdaq Market Maker shall report the trade to the Nasdaq Market Center;]

[(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS; and]

[(C) A Non-Registered Reporting Member shall report the trade to the Nasdaq Market Center or TRACS.]

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

[(6) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.]

[(7) In transactions between a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, the member representing the sell side shall report as follows:]

[(A) A Registered Reporting Nasdaq Market Maker shall report the trade to the Nasdaq Market Center; and]

[(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS.]

[(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either the Nasdaq Market Center, or TRACS, unless the trade is executed using ACES or the execution services of the Nasdaq Market Center. A trade executed using ACES must be reported to the Nasdaq Market Center, and trades executed using the execution services of the Nasdaq Market Center will be reported to the Nasdaq Market Center automatically.]

[(9) In transactions conducted through a Reporting ECN (as defined in Rule

6110) that are reported to the Nasdaq Market Center, the Reporting ECN shall ensure that transactions are reported in accordance with Rule 6130(c). If a Reporting ECN is also a Registered Reporting ADF ECN (as defined in Rule 4200A), Rule 6130(c) shall apply only to transactions conducted through the ECN for which trade reports are submitted to the Nasdaq Market Center.]

6000. NASD SYSTEMS AND PROGRAMS

The 6100 Series is replaced in its entirety by the following proposed rule language.

6100. CLEARING AND COMPARISON RULES

6110. Definitions

(a) The term “Browse” shall mean the function that permits a Participant to review (or query) for trades in the System identifying the Participant as a party to the transaction, subject to the specific uses contained in the System Users Guide.

(b) The term “Clearing Broker/Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the System as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term “Correspondent Executing Broker/Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the System as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term “Introducing Broker/Dealer” or “introducing broker” shall mean the member firm that has been identified in the System as a party to the transaction, but does not execute or clear trades.

(e) The terms “Participant,” “Reporting Order Entry Firm,” “correspondent executing broker/dealer,” “correspondent executing broker,” “introducing broker/dealer,” “introducing broker,” “clearing broker/dealer,” and “clearing broker” shall also include, where appropriate, the Non-Member Clearing Organizations and UTP Exchanges listed in Rules 6120(a)(5) and (a)(6) below and their qualifying members.

(f) The term “Parties to the Transaction” shall mean the executing brokers, introducing brokers and clearing brokers, if any.

(g) The term “Reportable Security” shall mean all Nasdaq National Market and Nasdaq SmallCap securities and convertible bonds listed on Nasdaq, all OTC Equity Securities as defined in Rule 6600, and all Direct Participation Programs as defined in Rule 6910.

(h) The term “Reportable System Transaction” shall mean those transactions in Reportable Securities that are eligible to be submitted using the System pursuant to NASD rules. The term also shall include transactions in Reportable Securities that are for less than one round lot.

(i) The term “Reporting ECN” shall mean a member of NASD that is an electronic communications network that is a participant of a registered clearing agency for clearing or

comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(j) The term “Reporting Market Maker” shall mean a member of NASD that meets the definition of Market Maker in Rule 4200 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(k) The term “Reporting Order Entry Firm” shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction 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 “Reporting Party” shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the System contained in Rule 6130.

(m) The term “System” shall mean the Trade Reporting Facility for purposes of trades in Nasdaq-listed securities and the OTC Reporting Facility for purposes of OTC equity securities and Direct Participation Programs.

(n) The term “Trade Reporting Participant” or “Participant” shall mean any member of NASD in good standing that uses the System.

6120. Trade Reporting Participation Requirements

(a) Mandatory Participation for Clearing Agency Members

(1) Participation in the System is mandatory for members that are participants of a clearing agency registered with the Commission pursuant to Section 17A of the

Act, and for members that have a clearing arrangement with such a participant, unless a member subscribes to TRACS. Such participation in the System shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) Participation in the System shall be conditioned upon the initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the participant to prevent unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by such participant, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each System identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the System as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(4) (A) Upon compliance with the conditions specified in subparagraph (B) below, access to and participation in the System shall be granted to the following Non- Member Clearing Organizations:

(i) West Canada Clearing Corporation; and

(ii) The Canadian Depository for Securities.

(B) Non-Member Clearing Organization access to and participation in the System shall be conditioned upon the Organization's initial and continuing compliance with the following requirements:

(i) execution of and continuing compliance with a Non-Member Clearing Organization Participation Application Agreement;

(ii) a Non-Member Clearing Organization shall only have access to the System to operate as a service bureau for its members functioning as Reporting Order Entry Firms, Correspondent Executing Broker/Dealers, Correspondent brokers, Clearing Broker/Dealers, or Clearing Brokers, as those terms are defined in Rule 6110;

(iii) registration as a clearing agency pursuant to the Act, membership in a clearing agency registered pursuant to the Act, or maintenance of an effective clearing arrangement with a registered clearing agency;

(iv) compliance with all applicable rules and operating procedures of NASD and the Commission;

(v) maintenance of the physical security of the equipment located on the premises of the Non-Member Clearing Organization to prevent the unauthorized entry of information into the System; and

(vi) a Non-Member Clearing Organization may only participate in the System on behalf of its members who have:

a. executed a Non-Member Access Participant

Application Agreement and

b. have been in continuing compliance with such

agreement.

(C) A Non-Member Clearing Organization may permit its members functioning as Reporting Order Entry Firms to have direct access to the System, provided the member of the Non-Member Clearing Organization complies with the following requirements:

(i) execution of a Non-Member Participant Application

Agreement;

(ii) membership in a Non-Member Clearing Organization

listed in paragraph (a)(4)(A) above; and

(iii) compliance with paragraph (a)(3)(C) through (E) above.

(D) A Non-Member Clearing Organization may permit its members functioning as Clearing Brokers to have direct access to the System provided the member of the Non-Member Clearing Organization complies with the following requirements:

(i) execution of a Non-Member Participant Application

Agreement;

(ii) membership in a Non-Member Clearing Organization

listed in paragraph (a)(4)(A) above; and

(iii) compliance with paragraph (a)(3)(C) through (E) above.

(6) Upon compliance with the conditions specified in subparagraphs (A) - (E) below, access to and participation in the System may be granted to a national securities exchange that trades Nasdaq National Market or SmallCap securities on an unlisted trading privileges basis ("UTP Exchange"). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.

(A) execution of, and continuing compliance with, a UTP Exchange Participant Application Agreement;

(B) continuing compliance with UTP Exchange Participant Application Agreement and all applicable rules and operating procedures of NASD and the Commission;

(C) maintenance of the physical security of the equipment located on the premises of the UTP Exchange to prevent the unauthorized entry of information into the System;

(D) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date; and

(E) A UTP Exchange shall not permit its members to have direct access to the System without the express written consent of NASD.

(7) Each Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.

(b) Participant Obligations

(1) Access

Upon execution and receipt by NASD of the Trade Reporting Facility Participant application agreement, a Participant may commence input and validation of trade information in Reportable Securities. Participants may access the service through computer interface or such other service as may be designated by NASD during the hours of operation specified in the Trade Reporting Facility Users Guide. Prior to such input, all Participants, including those that have trade report information submitted by any third party, must obtain from the System a unique identifying Market Participant Symbol (“MPID”), and use that identifier for trade reporting and audit trail purposes.

(2) System Participant Obligations

(A) Participants shall commence participation in the System by initially contacting the System Operation Center to verify authorization for submitting trade data to the System for Reportable Securities.

(B) A Participant that is a self-clearing firm shall be obligated to accept and clear each trade that the System identifies as having been effected by that Participant.

(C) A Participant that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a Participant and notify the System Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised Participant Application Agreement.

(D) If at any time a Participant fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended Reporting Participant Application Agreement, is filed with NASD.

(3) Clearing Broker Obligations

(A) System clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the System identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the System Operation Center and affirmative action has been completed by the Center to remove the clearing broker from the System for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).

(B) If at any time a System clearing broker fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended Participant Application Agreement, is filed with NASD.

6130. Trade Report Input

(a) Reportable Transactions

Members shall comply with the Rule 6100 Series when reporting transactions to the System, including executions of less than one round lot if those executions are to be compared and locked-in. All trades that are reportable transactions will be processed through the National Trade Reporting System; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through the System. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared by the System or reported to DTCC. All transactions in Direct Participation Program securities shall be reported to the System pursuant to the Rule 6900 Series as set forth therein.

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for transactions in Reportable Securities within 90 seconds after execution, or shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) Which Party Inputs Trade Reports

Participants shall, subject to the input requirements below, either input trade reports or use the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

(1) in transactions between a Reporting Market Maker and a Reporting Order Entry Firm, the Market Maker shall be required to submit a trade report to the System;

(2) in transactions between two Reporting Market Makers, the member representing the sell side shall be required to submit a trade report to the System;

(3) in transactions between two Reporting Order Entry Firms, the member representing the sell side shall be required to submit a trade report to the System;

(4) in transactions between a member and a non-member or customer, the member shall be required to submit a trade report to the System;

(5) in transactions conducted through a Reporting ECN that are reported to the System, the Reporting ECN shall ensure that transactions are reported in accordance with one of the following methods:

(A) the Reporting ECN shall submit the trade reports to the System and identify itself as the reporting party;

(B) the Reporting ECN shall submit the trade reports to the System on behalf of the reporting party and identify the reporting party in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above; or

(C) the Reporting ECN shall require one of the parties, determined in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above, to submit the trade reports to the System.

When a Reporting ECN reports transactions in accordance with subparagraph (A), the Reporting ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the Reporting ECN and the identified non-reporting party.

When a Reporting ECN reports transactions in accordance with subparagraph (B), both the Reporting ECN and the party identified as the reporting party shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the Reporting ECN and the identified reporting party. When a Reporting ECN requires reporting of transactions in accordance with subparagraph (C), the reporting party shall be responsible for ensuring the accuracy and completeness of the trade report.

A Reporting ECN shall provide written notice to NASD of the method of trade reporting used by the Reporting ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to NASD;

(6) in transactions conducted through two Reporting ECNs or a Reporting ECN and an ECN that is not a Reporting ECN, a Reporting ECN shall be responsible

for complying with the requirements of paragraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Reporting Order Entry Firm and a member for purposes of the rules for determining reporting parties reflected in paragraphs (1), (3), and (4) above; and

(7) in transactions conducted through a Reporting ECN in which neither of the parties is a member, the Reporting ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) Security identification symbol of the eligible security (SECID);

(2) Number of shares;

(3) Unit price, excluding commissions, mark-ups or mark-downs;

(4) The time of execution expressed in hours, minutes and seconds based on Eastern Time, unless another provision of NASD's rules requires that a different time be included on the report;

(5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;

(6) A symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt or cross;

(7) A symbol indicating whether the trade is as principal, riskless principal, or agent;

(8) Reporting side clearing broker (if other than normal clearing broker);

(9) Reporting side executing broker as "give-up" (if any);

(10) Contra side executing broker;

(11) Contra side introducing broker in case of "give-up" trade;

(12) Contra side clearing broker (if other than normal clearing broker).

(13) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

(e) Aggregation of Transaction Reports

Individual executions of orders in a security at the same price may be aggregated, for System reporting purposes, into a single report if the transactions are with the identical contra party; provided, however, that a reporting party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

Members shall report to the System the cancellation of any trade previously submitted to the System. The member responsible under NASD Rules for submitting

the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

Members shall comply with deadlines established in Rules 4632 and 6620 for reporting cancelled trades.

IM-6130. Trade Reporting of Short Sales

The NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in NNM securities at or below the inside bid when the current inside bid is below the previous inside bid. Rule 6130(d)(6) requires that members indicate on System reports whether a transaction is a short sale or a short sale exempt transaction ("short sale reporting requirements"). Rule 6130 explicitly requires members to file reports not just for NNM securities transactions, but for other securities transactions, including transactions in exchange-listed, SmallCap, convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator (or a "short sale exempt" indicator if it is a short sale transaction in an NNM or exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1).

6140. Trade Report Processing

Locked-in trades may be determined in the System by matching the trade information submitted by the reporting parties through one of the following methods:

(a) Trade by Trade Match

Both parties to the trade submit transaction data and the System performs an on-line match;

(b) Trade Acceptance

The reporting party enters its version of the trade into the System and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the System at the end of trade date processing;

(c) Aggregate Volume Match

A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncomparing trade reports (if all other matching fields agree) in order to effect matching;

(d) T+N Trade Processing

T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the System. The System will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. The System will automatically lock in and submit to DTCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. The System will not automatically lock in T+22 (calendar day) or older open “as/of” trades that were carried-over from the previous business day; these will be purged by the System at the end of the carry-over day if they remain open. Members may re-submit these T+22 or older

“as/of” trades into the System on the next business day for continued comparison and reconciliation for up to one calendar year.

6160. Obligation to Honor Trades

If a Participant is reported by the System as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

6170. Audit Trail Requirements

The data elements specified in Rule 6130(d) are critical to NASD’s compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the System have an ongoing obligation to input 6130(d) information accurately and completely.

6180. Violation of Reporting Rules

Failure of a Participant or person associated with a Participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

6190. Termination of Access

NASD may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or NASD, or fails to honor

contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the trade reporting service of the System.

* * * * *

6300. [Consolidated Quotations Service (CQS)] Reserved

[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 11Acl-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 for Decimal-based Quotations]

[(1) 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.]

[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] Reserved

[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, and such trade reports must include the time of execution.]

[(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, and include the time of execution on the trade report. 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, and include the time of execution.]

[(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, and include the time of execution on the trade report. 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) by transmitting the individual trade reports to the Nasdaq Market Center on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time;]

[(ii) by designating the entries "as/of" trades to denote their execution on a prior day; and]

[(iii) by including the time of execution. 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. Members shall also include the time of execution on the transaction report.]

[(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.^{1]}

[¹ Implementation of the .PRP modifier for listed securities is delayed until such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

[(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.²¹

[² Implementation of the .ST modifier for listed securities is delayed until such time that the Consolidated Tape Association approves use of the modifier and makes the necessary system changes to accommodate the modifier.]

[(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 if the trade is reported more than 90 seconds after execution.]

[(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)]	
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**[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	[No]	[No]	[No]	[Yes]

	customer and buys from:]				
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[IM-6420-2. Delayed Effective Date of Obligation to Include Time of Execution on All Reports Submitted to the Nasdaq Market Center]

[On April 19, 2004, the Securities and Exchange Commission ("SEC") approved a proposed rule change filed by the Association (SR-NASD-2003-159) requiring members to include the time of execution on all reports submitted to the Nasdaq Market Center reporting service (formerly known as the Automated Confirmation Transaction Service, or "ACT"). In response to comments from the Association's Small Firm Advisory Board, Nasdaq agreed to delay the effective date of this requirement until one year after the date of SEC approval. Therefore, the effective date of this requirement is April 25, 2005.]

[Until April 5, 2005, members remain obligated to provide the time of execution only in those circumstances specifically articulated in the Association's rules. To prevent confusion, Nasdaq has not modified the Association's rules to reflect the obligation to provide the time of execution in all circumstances. These language modifications will be made at a time closer to the actual effective date of the obligation.]

[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)(1) No member shall:]

[(A) personally buy or initiate the purchase of an eligible security for its own account or for any account in which it or any person associated with it is directly or indirectly interested, while such member holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer; or]

[(B) sell or initiate the sale of any such security for any such account, while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.]

[(2) No member shall:]

[(A) buy or initiate the purchase of any such security for any such account, at or below the price at which it personally holds or has knowledge

that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer; or]

[(B) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

[(3) The provisions of this paragraph shall not apply:]

[(A) to any purchase or sale of any such security in an amount less than the unit of trading made by a member to offset odd-lot orders for customers,]

[(B) to any purchase or sale of any such security upon terms for delivery other than those specified in such unexecuted market or limited price order,]

[(C) to any unexecuted order that is subject to a condition that has not been satisfied.]

[(D) to any purchase or sale for which a member has negotiated specific terms and conditions applicable to the acceptance of limit orders that are:]

[(i) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or]

[(ii) for 10,000 shares or more, unless such orders are less than \$100,000 in value.]

[(g) 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.]

[(h) 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.]

[(i) (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.]

[(j) 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

* * * * *

6530. OTCBB-Eligible Securities

A Member shall be permitted to quote the following categories of securities in the Service:

- (a) any domestic equity security that satisfies the requirements of paragraph (1) and either paragraph (2) or (3) or (4) below:

(1) the security is not listed on [The Nasdaq Stock Market (“Nasdaq”) or] a [registered] national securities exchange in the U.S., except that an equity security shall be considered eligible if it:

(A) and (B) No Change

(2) through (4) No Change

(b) any foreign equity security or American Depositary Receipt (ADR) that meets all of the following criteria:

(1) No Change

(2) the security is not listed on [Nasdaq or] a [registered] national securities exchange in the U.S., except that a foreign equity security or ADR shall meet this subparagraph (2) if it is:

(A) and (B) No Change

(c) No Change

(d) any Direct Participation Program as defined in Rule 6910 that is not listed on [Nasdaq or] a [registered] national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(e) No Change

6540. Requirements Applicable to Market Makers

(a) Market-maker participation in the OTCBB is voluntary and open to any NASD member firm that satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to [Level 3 Nasdaq Workstation service]the service designated by NASD that permits OTCBB quotations; and demonstrates

compliance with (or qualifies for an exception from) SEC Rule 15c2-11 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Rule 6740 sets forth the procedure for demonstrating compliance with SEC Rule 15c2-11.

(b) and (c) No Change

(d) OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so called “piggyback” exception in SEC Rule 15c2-11(f)(3)(i) are identified in the Service as “active” securities. A member can commence market making in any active security by registering as a market maker through [a Nasdaq Workstation at the firm]the service designated by NASD that permits OTCBB quotations. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security.¹

¹ No Change to footnote text.

(1) Permissible Quotation Entries

(A) through (B) No Change

(C) A priced bid and/or offer entered into the Service for a foreign equity security, an ADR, or a Direct Participation Program security shall be non-firm.² Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.³

² The non-firm or indicative nature of a priced entry in a foreign or ADR issue is specifically identified on the

montage of market maker quotations [accessible through the Nasdaq Workstation service] for this subset of OTCBB-eligible securities.

³ No Change to footnote text.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) provide written notice to [Nasdaq Market] Operations prior to the pricing of the distribution that includes the intended date and time of the pricing of the offering;

(ii) through (iv) No Change

(E) and (F) No Change

(2) and (3) No Change

(4) More Than One Trading Location

In cases where a market maker has more than one trading location, a fifth-character, geographic indicator shall be appended to the market maker's identifier for that security. Indicators are established by NASD and published from time to time in the Nasdaq/CQS symbol directory.

(5) No Change

(e) No Change

* * * * *

6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, [Nasdaq]NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter (“OTC”) market of a security or an American Depositary Receipt (“ADR”) that is included in the OTC Bulletin Board (“OTCBB”) if:

(1) the OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns (“Foreign Regulatory Halt”); provided, however, that [Nasdaq]NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) through (3) No change.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, [Nasdaq]NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should [Nasdaq]NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when [Nasdaq]NASD determines that the basis for the halt no longer exists, or when five business days have elapsed from the date [Nasdaq]NASD initiated the trading and quotation halt in the security, whichever occurs first. [Nasdaq]NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) No change.

* * * * *

6600. OVER-THE-COUNTER EQUITY SECURITIES

This Rule 6600 Series sets forth recording and reporting requirements for certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems

and the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as “OTC Equity Securities”). Members shall [utilize] use the [Nasdaq Market Center] OTC Reporting Facility for trade reporting in OTC Equity Securities.

6610. Definitions

(a) No Change.

[(b) “Nasdaq Market Center” means, for the purposes of Rules 6600–6630, the service provided by Nasdaq that, among other things, accommodates reporting and dissemination of last sale reports in OTC Equity Securities. Regarding those OTC Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the Nasdaq Market Center comparison function will not be available. However, the Nasdaq Market Center will support the entry and dissemination of last sale data on such securities.]

[(c)](b) “Non-Market Maker” means a member of the Association that is not an OTC Market Maker with respect to a particular OTC Equity Security.

[(d)](c) “Non-exchange-listed security” [“OTC Equity Security”] means any equity security that is not traded on any national securities exchange. [not classified as a “designated security,” for purposes of the Rule 4630 and 4640 Series. This term also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not “eligible securities” as defined in Rule 6410(d).] The term “non-exchange-listed security” [“OTC Equity Security”] shall not include “restricted

securities,” as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market, the Rule [5300]6700 Series.

(d) “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.

(e) No Change.

(f) “Priced entry” shall mean a quotation consisting of a bid, offer, or both at a specified price.

(g) “Quotation” shall mean any bid or offer at a specified price with respect to a non-exchange-listed security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-exchange-listed security.

(h) “Quotation medium” means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any non-exchange-listed security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(f) through (g) renumbered (i) through (j)

(k) “OTC Reporting Facility” means, for the purposes of the Rule 6600 Series, the service provided by NASD that accommodates reporting and dissemination of last sale reports in OTC Equity Securities. Regarding those OTC Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing

Corporation, the OTC Reporting Facility comparison function will not be available.

However, the OTC Reporting Facility will support the entry and dissemination of last sale data on such securities.

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) OTC Market Makers shall, within 90 seconds after execution, transmit to the OTC Reporting Facility[Nasdaq Market Center] last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit to the OTC Reporting Facility[Nasdaq Market Center], or by telephone to the [Nasdaq Market] Operations Department if the OTC Reporting Facility[Nasdaq Market Center] is unavailable due to system or transmission failure, last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4:00 p.m. Transactions not reported within 90 seconds after execution shall be designated as late.

(3) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in OTC Equity Securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be transmitted to the OTC Reporting Facility[Nasdaq Market Center] 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 must be designated as .T trades, and include the time of execution. 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.

(B) Last sale reports of transactions in OTC Equity Securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be transmitted to the OTC Reporting Facility[Nasdaq Market Center] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as “.T” to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades. Transactions not reported before 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.

(C) Last sale reports of transactions in OTC Equity Securities executed 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 in American Depositary Receipts (ADRs), Canadian issues, or domestic OTC Equity Securities that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted to the OTC Reporting Facility[Nasdaq Market Center]

between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date and be designated as “.T” trades to denote their execution outside normal market hours. 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. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic OTC Equity Securities that are executed between 6:30 p.m. and midnight Eastern Time shall be transmitted to the OTC Reporting Facility[Nasdaq Market Center] 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 to denote their execution on a prior day. 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; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted to the OTC Reporting Facility[Nasdaq Market Center] on T+1 regardless of time of execution.¹ Such reports shall be made between 8:00 a.m. and

1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(B)(ii) above.

¹ No Change to Text of Footnote.

(4) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities for which electronic submission to the OTC Reporting Facility[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 OTC Reporting Facility[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.

(5) through (6) No Change.

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

(8) All members shall append the .W trade report modifier to reports of Stop Stock Transactions, as such term is defined in Rule 6610, 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 6610, 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.^[2]

[² Use of the .W modifier for Stop Stock Transactions for OTC Equity Securities is delayed until the necessary system changes can be made to accommodate the modifier. Nasdaq will issue a notice of the exact implementation date.]

(9) To identify late pre-opening and after-hours trades reported late, NASD[Nasdaq] will convert the .T modifier to .ST for any report submitted to the OTC Reporting Facility [ACT] more than 90 seconds after execution.

(b) Which Party Reports Transaction

(1) In a transaction[s] between two OTC Market Makers, only the member representing the sell side shall report the transaction.

(2) In a transaction[s] between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report the transaction.

(3) In a transaction[s] between two Non-Market Makers, only the member representing the sell side shall the transaction.

(4) In a transaction[s] between a member and a customer, the member shall report the transaction.

(5) In a transaction[s] 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), and the term “Reporting Market Maker” as used in such rule shall be construed to refer to an OTC Market Maker.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) through (3) No Change.

(4) A symbol indicating whether the transaction is a buy, sell, sell short, or cross.

(5) No Change.

(d) Procedures for Reporting Price and Volume

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in OTC Equity Securities in the following manner:

(1) through (2) No Change.

(3) (A) For principal transactions, except as provided in subparagraph (B) hereof, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price [which] that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the OTC Equity Security, the number of shares

involved in the transaction, the published bids and offers with size displayed in any inter-dealer quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

(B) Exception: A “riskless” principal transaction in which a member, after having received an order to buy a security, 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 OTC Reporting Facility[Nasdaq Market Center]:

(i) No Change.

(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.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

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

(1) through (2) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions [which] that are part of a primary distribution by an issuer or a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

(2) through (4) No Change.

(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, m)]Members shall report to the OTC Reporting Facility[Nasdaq Market Center] the cancellation of any trade previously submitted to the OTC Reporting Facility[Nasdaq Market Center]. The member responsible under Rule 6620 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 6620 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) through (F) No Change.

(G) For purposes of determining the deadline by which a trade cancellation must be reported to OTC Reporting Facility[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.

* * * * *

[6700. REPORTING TRANSACTIONS IN NON-NASDAQ SECURITIES]

[6710. Definitions]

[For the purposes of this Rule 6700 Series, unless the context requires otherwise:]

[(a) “Issuer,” in the case of quotations for American Depositary Receipts (ADRs), shall mean the issuer of the deposited shares represented by such ADRs.]

[(b) “Non-Nasdaq Reporting System” means the electronic price and volume reporting system operated by the Association for non-Nasdaq securities.]

[(c) “Non-Nasdaq security” means any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange. For purposes of Rules 6720 and 6730 of this Series, the term “non-Nasdaq security” shall also mean any Nasdaq security, if transactions in that security are effected by market makers that are not registered Nasdaq market makers pursuant to Rule 4611, and any security listed on an exchange, if transactions are required to be reported pursuant to the Rule 6400 Series.]

[(d) “Priced entry” shall mean a quotation consisting of a bid, offer, or both at a specified price.]

[(e) “Quotation” shall mean any bid or offer at a specified price with respect to a non- Nasdaq security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-Nasdaq security.]

[(f) “Quotation medium” means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any non-Nasdaq security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.]

[6720. Price and Volume Reporting]

[(a) Each member shall report through the Non-Nasdaq Reporting System the following information on all principal transactions in non-Nasdaq securities:]

[(1) the highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security;]

[(2) the total volume of purchases and sales executed by it in each non-Nasdaq security; and]

[(3) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker/dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down.]

[(b) Members shall report the price and volume information required by paragraph (a) of this Rule through the Non-Nasdaq Reporting System between the hours of 4 p.m. and 6:30 p.m. Eastern Time on the trade date or between 7:30 a.m. and 9 a.m. Eastern Time on the next business day, or at such other time as determined by the Association.]

[(c) The reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to any non-Nasdaq security for which members are required to report individual transactions pursuant to the Rule 6600 Series.]

[6730. Automated Submission of Trade Data]

[RESERVED FOR FUTURE USE. REDESIGNATED AS 8213 BY SR-NASD-97-81 EFF. JAN. 16, 1998.]

[6740]6640. Submission of Rule 15c2-11 Information on [Non-Nasdaq] Non-Exchange-Listed Securities

(a) Except as provided in SEC Rule 15c2-11(f)(1), (2), (3) and (5) under the Act, no member shall initiate or resume the quotation of a non-exchange-listed [Nasdaq] security in any quotation medium unless the member has demonstrated compliance with this Rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, the Association, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-exchange-listed [Nasdaq] security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's

initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-exchange-listed [Nasdaq] security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by the Association, before inserting a priced entry for the affected non-exchange-listed [Nasdaq] security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by the Association at least three business days before the member's priced entry first appears in a quotation medium.

(d) No Change.

[6750]6650. Minimum Quotation Size Requirements For OTC Equity Securities

[(a)] Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service (OTCBB) (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid

or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

Price (Bid or Offer)	Minimum Quote Size
0 - .50*	5,000
.51 - 1.00	2,500
1.01 - 10.00	500
10.01 - 100.00	200
100.01 - 200.00	100
200.01 - 500.00	25
500.01–1000.00	10
1000.01–2500.00	5
2500.01 +	1

[(b) For purposes of this Rule, the term “OTC Equity Security” means any equity security not classified as a “designated security” for purposes of the Rule 4630 and 4640 Series, or as an “eligible security,” for purposes of the Rule 6400 Series. The term does not include “restricted securities,” as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market.]

[6800. Mutual Fund Quotation Service]

[(a) Description]

[The Mutual Fund Quotation Service collects and disseminates through The Nasdaq Stock Market prices for mutual funds, closed-end funds, money market funds and unit investment trusts.]

[(b) Eligibility Requirements]

[To be eligible for participation in the Mutual Fund Quotation Service, a fund shall:

[(1) be registered with the Commission as an open-end (“open-end fund”) or a closed-end (“closed-end fund”) investment company or a unit investment trust pursuant to the Investment Company Act of 1940,]

[(2) execute the agreement specified by the Association relating to the fund's obligations under the Program,]

[(3) pay, and continue to pay, the fees as set forth in Rule 7090, and]

[(4) submit quotations through an automatic quotation system operated by the Association.]

[(c) News Media List]

[(1) (A) An eligible open-end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or \$25 million in net assets.]

[(B) An eligible closed-end fund or unit investment trust shall be authorized for inclusion in the News Media List released by the Association if it has at least \$60 million in net assets.]

[(C) Compliance with subparagraph (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.]

[(2) (A) An authorized open-end fund shall remain included in the New Media List if it has at least 750 shareholders or \$15 million in net assets.]

[(B) An authorized closed-end fund or unit investment trust shall remain included in the News Media List if it has at least \$30 million in net assets.]

[(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.]

[(d) Supplemental List]

[An eligible open-end fund, closed-end fund or unit investment trust shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level 1 Service if it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:]

[(1) the fund or unit investment trust has net assets of \$10 million or more; or]

[(2) the fund or unit investment trust has had two full years of operation; or]

[(3) the fund's investment adviser or unit investment trust's sponsor:]

[(A) is the investment adviser or sponsor of least one other fund or unit investment trust that is listed on the Mutual Fund Quotation Service and that has net assets of \$10 million or more; and]

[(B) manages or sponsors open-end funds, closed-end funds, or unit investment trusts that have aggregate assets of at least \$15 million.]

[(e) Determination of Number of Shareholders]

[For the purposes of this Rule, the number of shareholders of a fund shall be measured by the sum of record holders, as reported by the fund to the Commission, and the number of accounts of members of the Association beneficially owned by customers (as defined in Rule 0120; provided, however, that an account with more than one beneficial owner shall be considered one account.)]

6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a [registered] national securities exchange [or through Nasdaq] shall be reported to the [Association] NASD in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

6910. Definitions

The following terms shall have the following meanings for purposes of Rule 6900.

(a) [“Nasdaq Market Center”] “OTC Reporting Facility” means the service [provided by Nasdaq] that, among other things, accommodates reporting of transactions in direct participation programs (DPPs). The [Nasdaq Market Center] OTC Reporting Facility comparison function will not be available for those DPPs that are both eligible for quotation in the OTC Bulletin Board and eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation. However, the [Nasdaq Market Center] OTC

Reporting Facility will support the entry and inclusion of transaction data on such securities for reporting purposes.

(b) through (e) No Change.

6920. Transaction Reporting

(a) When and How Transactions are Reported

(1) Reports of secondary market transactions in direct participation programs shall be transmitted to the [Nasdaq Market Center] OTC Reporting Facility on the next business day (“T+1”) after the date of execution between 8:00 a.m. and 1:30 p.m. Eastern Time, be designated “as of” trades to denote their execution on a prior day, and be accompanied by the time of execution. 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. Member firms that have the operational capability to report transactions within 90 seconds of execution, between the hours of 8:00 a.m. and 5:15 p.m. Eastern Time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed above.

(2) All members shall report to the Market Regulation Department in Rockville, Maryland on Form T, reports of transactions in DPPs that were not transmitted to the [Nasdaq Market Center] OTC Reporting Facility, for whatever reason, either on the trade date or the next business day. Form T shall be used exclusively as a back-up mode whenever electronic entry of trade data is not feasible due to system malfunctions or other unusual conditions.

(3) No Change.

(b) through (d) No Change.

(e) Transactions Not Required To Be Reported

The following transactions are not required to be reported under the foregoing procedures:

(1) through (2) No Changes.

(3) Transactions executed on a [registered] national securities exchange [or through Nasdaq].

* * * * *

6950. ORDER AUDIT TRAIL SYSTEM

6951. Definitions

For purposes of the Rule[s] 6950 Series[through 6957]:

(a) No Change.

[(b) "Association" shall mean the National Association of Securities Dealers, Inc. and its subsidiaries, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.]

(c) through (i) No Change.

(j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an [Nasdaq Stock Market] equity security listed on the Nasdaq Stock Market that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) "Order Audit Trail System" shall mean the automated system owned and operated by the Association that is designed to capture order information in equity securities listed on the Nasdaq Stock Market reported by members for integration with trade [information reported to the Nasdaq Market Center] and quotation information [disseminated by members in order] to provide the Association with an accurate time sequenced record of orders and transactions.

(l) through (n) No Change.

6952. Applicability

(a) Unless otherwise indicated, the requirements of the Rule 6950 Series [Rules 6953 through 6957] are in addition to the requirements contained in the By-Laws and Rules of the Association.

(b) Unless otherwise indicated, the requirements of the Rule 6950 Series [Rules 6953 through 6957] shall apply to all brokers and dealers admitted to membership in the Association and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule 6950 Series [Rules 6953 through 6957] shall apply to all executed or unexecuted orders for equity securities listed on [traded in] The Nasdaq Stock Market.

* * * * *

6954. Recording of Order Information

(a) through (b) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) No Change.

(2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(ii) through (vi) No Change.

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order:

(i) the routed order identifier assigned to the order by the member that transmits the order and

(ii) No Change.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) No Change.

(ii) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(iii) through (vii) No Change.

(B) the receiving Reporting Member operating the Electronic Communications Network shall record:

(i) No Change.

(ii) the routed order identifier assigned to the order by the member that transmits the order,

(iii) through (iv) No Change.

(4) through (5) No Change.

(6) When a member transmits an order to a non-member, including, but not limited to, a national securities exchange, the Reporting Member shall record:

(A) through (E) No Change.

(F) the number of shares to which the transmission applies,[and]

(G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member,[.]

(H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable, and

(I) identification of the national securities exchange or facility operated by a registered securities association where the trade was transmitted, as applicable.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) through (2) No Change.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) through (C) No Change.

(D) the Reporting Member's number assigned for purposes of identifying transaction data in the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by NASD,

(E) through (K) No Change.

* * * * *

[7090. Mutual Fund Quotation Service]

[(a) Funds and Unit Investment Trusts included in the Mutual Fund Quotation Service ("MFQS") shall be assessed an annual fee of \$400 per fund or trust authorized for the News Media Lists and \$275 per fund or trust authorized for the Supplemental List. Funds authorized during the course of an annual billing period shall receive a proration of these fees but no credit or refund shall accrue to funds or trust terminated during an annual

billing period. In addition, there shall be a one-time application processing fee of \$325 for each new fund or trust authorized.]

[(b) If a Unit Investment Trust expires by its own terms during an annual billing period and is replaced within three months by a trust that is materially similar in investment objective, the replacing trust shall be charged a one-time application fee of \$150. In addition, the replacing trust shall not be charged an annual fee if the expiring trust has already paid an annual fee for that annual billing period.]

[(c) Funds included in the MFQS and pricing agents designated by such funds (“Subscriber”), shall be assessed a monthly fee of \$100 or each logon identification obtained by the Subscriber. A Subscriber may use a logon identification to transmit to Nasdaq pricing and other information that the Subscriber agrees to provide to Nasdaq.]

[(d) Funds included in the MFQS shall be assessed a \$20 administrative fee to process a request to amend the name and/or the symbol of a fund.]

[(e) Distributors receiving MFQS shall pay a monthly fee of \$1,000. For the purposes of this subsection only, the term “distributor” shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such firms must execute a Nasdaq Distributor Agreement.]

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8200. INVESTIGATIONS

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8212. [Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association] Reserved

[(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series (“Nasdaq International”) as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms “participating firm” and “firm” include both Association members and approved affiliates that utilize the Service.]

[(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:]

[(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;]

[(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;]

[(3) Identifying symbol assigned to the security;]

[(4) Date transaction was executed;]

[(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;]

[(6) Transaction price;]

[(7) Account number; and]

[(8) Market center where transaction was executed.]

[(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:]

[(1) The data described in subparagraphs (b)(1) through (8);]

[(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and]

[(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.]

[(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.]

[(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.]

8213. Automated Submission of Trading Data for Non-Exchange-Listed [Nasdaq] Securities Requested by the Association

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-exchange-listed [Nasdaq] securities as defined in the Rule

[6700]6600 Series that are the subject of a request for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

* * * * *

9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

9110. Application

(a) through (b) No Change.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD[,] or NASD Regulation [or Nasdaq].

* * * * *

9120. Definitions

(a) through (r) No Change.

(s) “Market Regulation Committee”

The term “Market Regulation Committee” means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the [Nasdaq Stock Market] Trade Reporting Facility Rules (Rule 4000 Series), NASD Alternative Display Facility Rules (Rule 4000A Series), other [Nasdaq and] NASD [Market] Reporting Facility Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 and 6000A Series), and Charges for Services and Equipment Rules (Rule 7000 and 7000A Series).

(t) through (cc) No Change.

* * * * *

9230. Appointment of Hearing Panel, Extended Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel

(a) No Change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) through (C) No Change.

(D) previously served as a Director[, a director of the Nasdaq Board of Directors,] or a Governor, but does not serve currently in any of these positions.

(2) No Change.

(c) through (e) No Change.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, [3350]5100, 8211, 8212, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) through (c) No Change.

* * * * *

9700. [PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS] Reserved

[9710. Purpose]

[The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or

communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series, the Uniform Practice Code as set forth in the Rule 11000 Series, or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.]

[9720. Form of Application]

[All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to Nasdaq relating to automated quotation, execution or communications system owned or operated by Nasdaq and to NASD for any such system owned and operated by NASD.]

[9730. Request for Hearing]

[Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, NASD or Nasdaq, as applicable, may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.]

[9740. Consideration of Applications]

[All applications shall be considered by a hearing panel designated by the Board of Governors. The applicant shall be entitled to be heard in person and by counsel and to submit any relevant matter. In any such proceeding a record shall be kept.]

[9750. Decision]

[Decisions on applications shall be in writing and a copy shall be sent by mail to the applicant. The hearing panel may communicate its determination to the applicant prior to the issuance of a written decision, which shall be effective as of the time of such communication. The written decision shall contain the reasons supporting the hearing panel's conclusions.]

[9760. Review by the Nasdaq Listing and Hearing Review Council]

[The decision shall be subject to review by the Nasdaq Listing and Hearing Review Council on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the Nasdaq Listing and Hearing Review Council, shall not operate as a stay of the decision.]

[9770. Findings of the Nasdaq Listing and Hearing Review Council on Review]

[Upon consideration of the record, and after such further hearings as it shall order, the Nasdaq Listing and Hearing Review Council shall affirm, modify, reverse, dismiss, or remand the decision. The Nasdaq Listing and Hearing Review Council shall set forth specific grounds upon which its determination is based.]

[9780. Discretionary Review by the Board]

[Determinations of the Nasdaq Listing and Hearing Review Council may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Nasdaq Listing and Hearing Review Council's decision but which is 15 calendar days or more following the decision of the Nasdaq Listing and Hearing Review Council. Notwithstanding the preceding sentence, the

NASD Board may determine it is advisable to call for review any decision of the Nasdaq Listing and Hearing Review Council within the 15 calendar day period following the decision of the Nasdaq Listing and Hearing Review Council. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Nasdaq Listing and Hearing Review Council determinations. The Board shall affirm, modify or reverse the determinations of the Nasdaq Listing and Hearing Review Council or remand the matter to the Nasdaq Listing and Hearing Review Council with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

[9790. Application to Commission for Review]

[Any decision not appealed under Rule 9760 or called for review under Rule 9760 or Rule 9780 shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. In any case where a person feels aggrieved by any final action of the Association issued pursuant to Rule 9770 or Rule 9780, the person may make application for review to the Commission in accordance with the Act.]

* * * * *

11300. DELIVERY OF SECURITIES

11310. Book-Entry Settlement

(a) through (c) No Change.

(d) (1) No Change.

(2) A determination under r[R]ules [4310(c)(23) or under the corresponding rule] of a national securities exchange that a security depository has included a

CUSIP number identifying a security in its file of eligible issues does not render the security “depository eligible” under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on [The Nasdaq Stock Market] the exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on [The Nasdaq Stock Market] the exchange, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on [The Nasdaq Stock Market] the exchange.

(e) through (g) No Change.

* * * * *

11500. DELIVERY OF SECURITIES WITH RESTRICTIONS

11580. Transfer of Limited Partnership Securities

(a) Each member [who] that participates in the transfer of limited partnership securities, as defined in Rule 2810, shall use standard transfer forms in the same form as set

forth in IM-11580. This Rule shall not apply to limited partnership securities [which] that are traded on [The Nasdaq Stock Market or] a [registered] national securities exchange, or are on deposit in a registered securities depository and settle regular way.

(b) No Change.

* * * * *

11800. CLOSE-OUT PROCEDURES

11810. Buying-In

No Change to Rule Text

IM-11810. Sample Buy-In Forms

(a) through (b) No Change.

(c) Seller's Failure to Deliver After Receipt of Notice

(1) (A) No Change.

(B) For transactions in [Nasdaq] exchange-listed [S] securities where the buyer is a customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for "cash" in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(C) No Change.

(2) No Change.

(d) through (m) No Change.

* * * * *

11890. [Clearly Erroneous Transactions] Reserved

[(a) Authority to Review Transactions Pursuant to Complaint of Market Participant]

[(1) Scope of Authority.]

[Officers of Nasdaq designated by its President shall, pursuant to the procedures set forth in paragraph (a)(2) below, have the authority to review any transaction arising out of the use or operation of any execution or communication system owned or operated by Nasdaq and approved by the Commission, including transactions entered into by a member of a national securities exchange with unlisted trading privileges in Nasdaq-listed securities (a “UTP Exchange”) through such a system; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous. If the officer determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in

had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2) Procedures for Reviewing Transactions]

[(A) Any member, member of a UTP Exchange, or person associated with any such member that seeks to have a transaction reviewed pursuant to paragraph (a)(1) hereof shall submit a written complaint to Nasdaq MarketWatch in accordance with the following time parameters:]

[(i) for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time, complaints must be received by Nasdaq by 10:30 a.m., Eastern Time; and]

[(ii) for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be received by Nasdaq within thirty minutes.]

[(B) Once a complaint has been received in accord with subparagraph (a)(2)(A) above:]

[(i) the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1);]

[(ii) the counterparty to the trade shall be notified of the complaint via telephone by Nasdaq staff and shall have up to thirty (30) minutes, or

such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1); and]

[(iii) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.]

[(C) Notwithstanding subparagraph (a)(2)(B) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(1) above.]

[(D) Each member, member of a UTP Exchange, or person associated with any such member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in subparagraph (a)(2)(B) above.]

[(E) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(1).]

[(b) Procedures for Reviewing Transactions on Nasdaq's Own Motion]

[In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue.]

[(c) Review by the Market Operations Review Committee ("MORC")]

[(1) A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member

may appeal a determination made under subsection (b) to the MORC unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by Nasdaq by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination being appealed. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in this section, shall affirm, modify, reverse, or remand the determination.]

[(2) The decision of the Committee pursuant to an appeal, or a determination by a Nasdaq officer that is not appealed, shall be final and binding upon all parties and shall constitute final Association action on the matter in issue. Any determination by a

Nasdaq officer pursuant to paragraph (a) or (b) or any decision by the Committee pursuant to paragraph (c)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.]

[(d) Communications]

[(1) All materials submitted to Nasdaq or the MORC pursuant to this Rule shall be submitted via facsimile machine and within the time parameters specified herein; provided, however, that if requested, Nasdaq staff may authorize submission of material via electronic mail on a case-by-case basis. Materials shall be deemed received at the time indicated by the equipment (i.e., facsimile machine or computer) receiving the materials. Nasdaq, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.]

[(2) Nasdaq shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to subsection (b), Nasdaq may instead provide notice to parties via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.]

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