

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

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

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

**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	<input type="text" value="Stephanie"/>	Last Name	<input type="text" value="Dumont"/>
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**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	<input type="text" value="06/15/2006"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="Vice President &amp; Associate General Counsel"/>
	(Title)

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information**

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

**Exhibit 1 - Notice of Proposed Rule Change**

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 1 to SR-NASD-2005-087, which amends the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”), NASD By-Laws, Nasdaq By-Laws and NASD rules to reflect NASD’s and The Nasdaq Stock Market, Inc.’s (“Nasdaq”) proposed implementation strategy for the operation of The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) as a national securities exchange for Nasdaq-listed securities only during a transitional period, to make certain changes to the rules that govern quoting and trading through the NASD Alternative Display Facility (“ADF”), and to establish rules for trading otherwise than on an exchange through the new Trade Reporting Facility.

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**

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

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.

The effective date of the proposed rule change will be the date upon which the Nasdaq Exchange operates as an exchange for Nasdaq-listed securities.

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

(a) Purpose

**Rule Filing History**

On July 11, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-087, which, among other things, proposed amendments to NASD's Delegation Plan, By-Laws and NASD rules to reflect Nasdaq's separation from NASD

upon the Nasdaq Exchange's operation as a national securities exchange<sup>2</sup> (the "original filing"). On July 22, 2005, the Commission published for comment the proposed rule change in the Federal Register.<sup>3</sup> The Commission received five comment letters, two of which were from the same commenter, in response to the publication of the proposed rule change in the Federal Register.<sup>4</sup> The commenters raised several issues relating to the proposed rule change that were summarized and responded to in a separate letter that NASD submitted to the Commission.<sup>5</sup>

NASD is filing this Amendment No. 1 to SR-NASD-2005-087 ("Amendment No. 1") to propose the following changes to the original filing: (1) amendments to retain NASD's delegation to Nasdaq relating to the operation of trading and quoting platforms

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<sup>2</sup> The SEC approved the Nasdaq Exchange application on January 13, 2006. See Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006). See also Exchange Act Release No. 52559 (Oct. 4, 2005), 70 FR 59097 (Oct. 11, 2005) and Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131).

<sup>3</sup> See Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005).

<sup>4</sup> See Letters dated August 12, 2005 and November 10, 2005 from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. (NYSE); Letter dated October 13, 2005 from Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc.; Letter dated November 4, 2005 from John Boese, Vice President and Chief Regulatory Officer, Boston Stock Exchange (BSE); and Letter dated November 10, 2005 from Kevin J. P. O'Hara, Chief Administrative Officer and General Counsel, of Archipelago Holdings, Inc. (Arca).

<sup>5</sup> See Letter dated November 23, 2005, from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD. As discussed below, the Commission received nine additional comment letters, as well as an additional response from NASD, after NASD had submitted its initial response to comments.

and associated linkages with respect to New York Stock Exchange (“NYSE”) and American Stock Exchange (“Amex”) securities (“non-Nasdaq exchange-listed securities”) for a transitional period of time; (2) clarifying changes relating to the ADF rules; (3) clarifying changes relating to the Trade Reporting Facility rules and the Limited Liability Company Agreement of The Trade Reporting Facility LLC between Nasdaq and NASD (the “LLC Agreement”); (4) reinstatement of the Rule 9700 Series relating to the process for grievances related to automated systems, which was proposed to be deleted in the original filing; and (5) other corrections and technical changes.

#### **Quoting and Trading of Non-Nasdaq Exchange-listed Securities**

NASD is proposing amendments to NASD rules that would retain its current delegation to Nasdaq relating to the operation of over-the-counter (“OTC”) quotation and trading facilities for non-Nasdaq exchange-listed securities for a limited period of time. Specifically, to facilitate an orderly transition and minimize any potential disruption to the marketplace, for a transitional period, the Nasdaq Exchange has proposed to operate as an exchange for purposes of Nasdaq-listed securities only, while Nasdaq continues to perform its current obligations under the NASD’s Delegation Plan with respect to non-Nasdaq exchange-listed securities.<sup>6</sup> During this transitional period, NASD would retain its control of Nasdaq through the Preferred D share. The Nasdaq By-Laws, the provisions of the Delegation Plan that delegate to Nasdaq responsibility for the operation

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<sup>6</sup> See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy M. Morris, Secretary, Commission (March 31, 2006) (available at [www.sec.gov/rules/other/2006/10-131-nasdaq033106.pdf](http://www.sec.gov/rules/other/2006/10-131-nasdaq033106.pdf)).

of quotation and trading facilities for non-Nasdaq exchange-listed securities and all current rules relating to such activities also would remain in effect, as amended herein.<sup>7</sup>

Any such transitional period would end following SEC approval of a separate NASD filing, which NASD intends to submit in the near future, proposing OTC quoting and trade reporting requirements for non-Nasdaq exchange-listed securities (the “Non-Nasdaq OTC Filing”). Thus, if the Non-Nasdaq OTC Filing is approved before the date upon which the Nasdaq Exchange begins to operate for trading Nasdaq-listed securities, the Nasdaq Exchange may operate for all securities at a single point in time or for Nasdaq-listed securities only for a transitional period of up to 60 days following SEC approval of the Non-Nasdaq OTC Filing. Decisions as to operational dates and the extent of any transitional period will be made with a view to balancing transitional impact on NASD, the Nasdaq Exchange and market participants.

To effectuate this transitional period, current NASD rules governing the quoting, trading and execution of exchange-listed securities would remain substantially the same as they are today.<sup>8</sup> The proposed amendments described herein generally would maintain the current Rule 4700 (Nasdaq Market Center – Execution Services), 4900 (Brut System), 4950 (INET System), 5200 (Intermarket Trading System/Computer Assisted

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<sup>7</sup> When the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities, the retained delegation and the rules governing trading of non-Nasdaq exchange-listed securities through Nasdaq will be eliminated, and the Preferred D Share will be cancelled. These changes will be made through a separate filing with the SEC, as described in more detail below.

<sup>8</sup> Among other technical and conforming changes to these rules, the term Nasdaq Market Center has been deleted to avoid confusion, given that the term is used with respect to the Nasdaq Exchange.

Execution System), 6300 (Consolidated Quotation Services (CQS)), 6400 (Reporting Transactions in Listed Securities)<sup>9</sup> and 11890 (Clearly Erroneous Transactions) Series, and IM-4400 (Impact of Non-Designation of Certain Dually Listed Securities), which were proposed to be revised or deleted in the original filing.<sup>10</sup> The proposed amendments also would add Rule 6431, which describes Nasdaq's trade halt authority with respect to non-Nasdaq exchange-listed securities. Previously, this trade halt authority was contained in Rule 4120, but because that provision was renumbered in the original filing and now relates only to the Trade Reporting Facility, the proposed rule change proposes a separate rule for trading halts in non-Nasdaq exchange-listed securities.

With respect to the Rule 4700 Series, which provides the order entry and execution requirements for the Nasdaq Market Center, including its SuperIntermarket ("SIM") system for non-Nasdaq exchange-listed securities, the proposed rule change

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<sup>9</sup> The Rule 6400 Series addresses over-the-counter trade reporting requirements for non-Nasdaq exchange-listed securities. Nasdaq will continue to use the Automated Confirmation Transaction Service (ACT) for purposes of the Rule 6400 Series and will be acting pursuant to the NASD Delegation Plan in performing this function. ACT also will be used for trade reporting through the Trade Reporting Facility pursuant to the Rule 4000 series. In addition, ACT will be used with respect to the trade reporting requirements associated with the OTC Reporting Facility; however, Nasdaq will be providing NASD the use of ACT for this purpose via a services agreement.

<sup>10</sup> In the original filing, NASD proposed a new Rule 5200 that would prohibit members from executing otherwise than on an exchange a 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. This proposed rule prohibits the same conduct as current Rule 6440(i). Therefore, NASD is proposing to delete Rule 6440(i). In addition, because NASD is no longer deleting the current Rule 5200 Series as part of this Amendment No. 1, NASD is proposing to renumber proposed new Rule 5200 as Rule 5110.



would retain those rules that apply or relate to the quoting, trading and execution of non-Nasdaq exchange-listed securities. Accordingly, the proposed rule change deletes Nasdaq Market Center rules, functionality and processes that apply or relate only to the quoting and trading of Nasdaq securities, as those securities would not be traded through SIM during a transitional period.

Similar changes have been proposed with respect to the Rule 4900 and 4950 Series, which provide the order entry and execution requirements for the Brut and Inet systems, respectively. Brut and Inet are currently separate trading platforms owned and operated by Brut L.L.C., a registered broker-dealer that is a member of the NYSE and NASD and a wholly owned subsidiary of Nasdaq. Although owned by a broker-dealer, the trading platforms are also currently facilities of NASD, operated by Nasdaq under the Delegation Plan for trading Nasdaq-listed and non-Nasdaq exchange-listed securities. The proposed rule change deletes Brut and Inet rules, functionality and processes that apply or relate only to the quoting and trading of Nasdaq securities. During any transitional period, Brut and Inet would quote and trade non-Nasdaq exchange-listed securities as facilities of NASD subject to the Delegation Plan. Brut's quotes for securities listed on NYSE and Amex would be posted and accessible through SIM, as would Inet's quote for Amex-listed stocks. To the extent that Brut and Inet both quote the same stock through SIM, they are represented by separate market participant identifiers ("MPIDs") registered in the name of Brut L.L.C. Inet's quotes for NYSE-listed stocks are currently posted and accessible through the National Stock Exchange ("NSX"), but are now in the process of being transferred to SIM on a security-by-security

basis. Accordingly, Inet may quote these stocks in both NSX and SIM, depending on the progress of this transfer.

As an ITS/CAES Market Maker in the stocks it quotes in SIM, Brut L.L.C. is required to ensure that all trades that it executes in these stocks comply with the provisions of the Intermarket Trading System (“ITS”) Plan applicable to ITS/CAES Market Makers, including trade-through obligations. Brut L.L.C.’s obligations as an ITS/CAES Market Maker extend to all trades that it executes through the Brut or Inet platforms in these stocks. Accordingly, Brut L.L.C. has programmed both systems to avoid trade-throughs in all circumstances, regardless of whether liquidity is accessed through SIM or through direct connections to the trading platforms.

With respect to Rule 11890, in the original filing, NASD proposed to delete Rule 11890 in its entirety as relating exclusively to participation in, and the operation of, a market. To the extent that Nasdaq will continue to be operating SIM during a transitional period, the proposed rule change retains those provisions in Rule 11890 that relate to Nasdaq’s clearly erroneous authority, but only to the extent those provisions apply to non-Nasdaq exchange-listed securities. Specifically, as amended, Rule 11890(a) provides Nasdaq authority to review transactions in non-Nasdaq exchange-listed securities pursuant to a complaint by a market participant relating to the use or operation of any execution or communication system owned or operated by Nasdaq. Rule 11890(b)(1) provides Nasdaq the authority to review transactions in non-Nasdaq exchange-listed securities on its own motion in the event of a disruption or malfunction in the use of a Nasdaq system or due to extraordinary market conditions.

In addition, on October 1, 2005, NASD assumed direct authority for OTC equities operations, in place of a delegation to Nasdaq.<sup>11</sup> As part of this change, NASD amended Rule 11890(b) to provide NASD, rather than Nasdaq, authority to declare, on its own motion, clearly erroneous transactions in OTC equity securities (e.g., OTCBB and Pink Sheets securities) in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. NASD is proposing to retain this authority.

Upon further consideration, NASD also is proposing to amend Rule 11890 to provide NASD with similar clearly erroneous authority with respect to all transactions in Nasdaq securities reported to NASD. Currently, this authority is delegated to Nasdaq with respect to trades reported through Nasdaq's ACT. There currently is no such authority with respect to trades reported to the ADF. The proposed amendments would provide NASD the authority to declare, on its own motion, clearly erroneous transactions in Nasdaq securities reported to the ADF or the Trade Reporting Facility in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. NASD believes that in very limited circumstances it may be appropriate for NASD to have and use such authority, for example, where there is an extraordinary event and multiple self-regulatory organizations are canceling or modifying trades.<sup>12</sup>

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<sup>11</sup> See Securities Exchange Act Release No. 52508 (Sept. 26, 2005), 70 FR 57346 (Sept. 30, 2005) (SR-NASD-2005-089).

<sup>12</sup> In addition, the proposed rule change amends Section IV of the Delegation Plan related to StockWatch to clarify that StockWatch no longer performs the trading halt functions for securities quoted in the OTCBB pursuant to the Delegation Plan. That function is performed by NASD. Similarly, functions relating to the

### **Proposed Clarifying Changes Relating to the ADF Rules**

NASD also is proposing several technical and clarifying changes to make the ADF and Trade Reporting Facility rules more consistent, where appropriate, for example, trade halt authority, trade reporting exclusions and the reporting of cancelled trades.

NASD also is proposing to delete Rule 4611A(c) and (d) relating to electronic registration by ADF market makers because the ADF system currently does not use such a procedure. In proposed Rule 4632A(a)(2)(B)(i), NASD is proposing to retain the current requirement with respect to reporting transactions in ADF-eligible securities that are executed between midnight and 8:00 a.m. In the original filing, NASD proposed to amend this requirement to allow such trades to be reported until 6:30 p.m. Although the ADF system is capable of accepting trade reports after 9:30 a.m., NASD is proposing to retain the current requirement that a member must report such trades prior to 9:30 a.m., such that trades reported after 9:30 a.m. will continue to be considered late.

In addition, SEC staff has requested further clarification of which rules proposed in the original filing apply not only to Registered Reporting ADF market makers, but to Registered Reporting ADF ECNs as well. These are the following: Rule 4613A(b), relating to firm quote requirements; Rule 4617A, relating to normal business hours; Rule 4618A, relating to clearance and settlement requirements; and Rule 4621A and 4622A relating to NASD's ability to suspend or terminate quotations or ADF services.

SEC staff also requested further clarification of the proposed amendments to Rule

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Uniform Practice Code are no longer delegated to the Nasdaq Board, and the change has been made accordingly to Article XIV, Section 2 of the NASD By-laws.

4619A, such that ADF participants, which today consists of solely of Registered Reporting ECNs, would not have the ability to act in the capacity of a passive market maker. Passive market making is used by market makers that are participating in a secondary offering of a security in conformity with Regulation M and pertinent SEC Rules. For purposes of ADF, NASD does not believe there is a need for a passive market making rule. Accordingly, if a market maker were, in the future, to quote in the ADF and participate in a secondary offering of a security, the ADF market maker would be required to stop quoting in the ADF in conformity with Regulation M and pertinent SEC Rules.

#### **Proposed Changes Relating to the Trade Reporting Facility Rules and the LLC Agreement**

As described in more detail in the original filing, NASD is proposing to establish the Trade Reporting Facility, which will provide members another mechanism for reporting transactions effected otherwise than on an exchange.<sup>13</sup> In addition to several technical and clarifying changes, NASD is proposing to delete the provisions in the Rule 6100 Series relating to UTP exchange access to the Trade Reporting Facility, given that UTP exchanges do not currently use Nasdaq's ACT and, therefore, will not require access to the Trade Reporting Facility. NASD also is proposing to delete proposed Rule 4644, which provides that only convertible debt listed on Nasdaq equaling 99 bonds or

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<sup>13</sup> As also noted in the original filing, NASD will have an integrated audit trail of Trade Reporting Facility and ADF transactions and will have integrated surveillance capabilities. NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by third quarter 2006. Prior to that time, NASD staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.

less will be disseminated by the Trade Reporting Facility. Today, all transactions in Nasdaq-listed convertible debt, irrespective of size, are disseminated and the Trade Reporting Facility will continue to maintain the status quo.<sup>14</sup> Finally, NASD is noting, as it did in its original filing, that the proposed rule change 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 rule filing with the SEC.

NASD also has made several clarifying changes to the LLC Agreement. Specifically, Sections 1 through 5 have been finalized to reflect the name, registered office and registered agent for the new entity. Section 9(v) has been changed to delete the reference to Nasdaq Marketwatch. Section 10 has been changed to reflect that the Business Member may designate as Directors not only persons who are directors, officers or employees of the Business Member but also those who are directors, officers or employees of an Affiliate. Finally, Section 20 has been changed to reflect that in the event of termination, the parties shall negotiate in good faith to allow the Business Member to operate under the SRO license of either the Business Member or one of its Affiliates. The schedules to the LLC Agreement also have been updated to reflect the initial officers of the LLC and Nasdaq's capital contribution.

#### **Rule 9700 Series Related to Grievances Concerning Automated Systems**

The Rule 9700 Series currently sets forth procedures to address unspecified

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<sup>14</sup> NASD also is proposing to delete the comparable provision in the ADF rules, Rule 4632A(1).

general grievances related to any automated quotation, execution or communication system operated by NASD or Nasdaq. In the original filing, NASD proposed to delete Rule 9700 in its entirety as relating exclusively to participation in and the operation of Nasdaq. However, because the Rule 9700 Series governs, among other things, review requests of OTCBB eligibility determinations under Rule 6530, NASD is proposing to retain the Rule 9700 Series. Throughout the Rule 9700 Series, references to Nasdaq and Nasdaq systems have been deleted and/or replaced with NASD or NASD systems, as appropriate. With respect to Rule 9760, which currently relates to the review of decisions by the Nasdaq Listing and Hearing Review Council (“Council”), NASD is proposing to replace the references to the Council with a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members. This proposed change is intended to ensure the new committee designated to perform this function retains the current non-industry composition of the Council.

#### **Other Corrections and Subsequent Changes to the Manual**

A number of grammatical, capitalization and other technical, non-substantive changes are proposed in this Amendment No. 1. In addition, a number of rule changes have been approved by the SEC and implemented between the time that NASD filed the original filing and this amendment that amended the underlying text provided in Exhibit 5 of the original filing. These include the following rule changes along with the rules affected: SR-NASD-2005-089 amended the Delegation Plan and Rule 6545; SR-NASD-2005-103 amended Rule 3110 and IM-3110; SR-NASD-2005-108 amended Rules 4200, 4200A and 5410 (updated deleted text); SR-NASD-2005-092 and SR-NASD-2006-050

(both filed for immediate effectiveness) amended Rule 4100A; SR-NASD-2005-149 amended Rule 3350 (renumbered in this amendment as Rule 5100); SR-NASD-2006-004 (filed for immediate effectiveness) extended the pilot program under Rule 5266(b); SR-NASD-2005-124 (filed for immediate effectiveness) repealed Rule 6440(f); SR-NASD-2004-009, SR-NASD-2005-089, and SR-NASD-2005-115 amended Rule 11890. The underlying text used in both Exhibits 4 and 5 has been updated to reflect these changes.

In one instance, proposed new paragraph (I) of Rule 6954(c)(6) was inadvertently not underlined in the original filing to indicate new text, but has been so marked in both Exhibit 4 and 5. Clarifying changes also are made to that provision as part of this amendment. There also were instances of incorrect rule text filed in the original filing in the Delegation Plan, By-Laws of NASD Regulation, Rules 2520, 2810, 2860, 4632A, 5430 (although NASD is proposing to delete this text), 6420, 6620, 6750 (renumbered in this amendment as 6650), and 9231. In addition, Rule 5333 and the Rule 5100 Series previously should have been deleted from the NASD Manual, but inadvertently were not.<sup>15</sup> Similarly, amendments to Rule 6540(d)(1)(C) inadvertently were not incorporated

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<sup>15</sup> With respect to Rule 5333 (Quotations in PORTAL Securities), NASD proposed adoption of the rule in SR-NASD-99-66. However, in response to comments, NASD deleted the rule in a subsequent amendment and the SEC approved SR-NASD-99-66, as amended, in March 2001. See Exchange Act Release No. 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001). Accordingly, Rule 5333 has been deleted from the Manual.

With respect to the Rule 5100 Series, the SEC originally approved operation of the Nasdaq International Service and NASD Rule 5100 Series (the Nasdaq International Service Rules) in October 1991 on a pilot basis. See Exchange Act Release No. 29812 (Oct. 11, 1991), 56 FR 52082 (Oct. 17, 1991) (File No. SR-NASD-90-33). The Service was launched on January 20, 1992, and the pilot period was subsequently extended through October 9, 2003. See Exchange Act



in the NASD Manual at the time they were approved.<sup>16</sup> The underlying text used in both Exhibits 4 and 5 has been corrected to reflect these inaccuracies.

The effective date of the proposed rule change will be the date upon which the Nasdaq Exchange begins to operate for Nasdaq-listed securities.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>17</sup> 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**

NASD does not believe that the proposed rule change will result in any burden on

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Release No. 46589 (Oct. 2, 2002), 67 FR 63001 (Oct. 9, 2002) (File No. SR-NASD-2002-130). The pilot period was never extended after that date; however, the rule text inadvertently was not removed from the NASD Manual upon expiration of the pilot period. Accordingly, the Nasdaq International Service Rules have been deleted from the Manual.

<sup>16</sup> In 1997, the Commission approved proposed amendments to Rule 6540(b)(1)(C). See Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997) (order approving SR-NASD-92-7). Subparagraph (b) of Rule 6540 was later renumbered to (d), with no change to the rule text of that subparagraph. See Exchange Act Release No. 45915 (May 10, 2002), 67 FR 35171 (May 17, 2002) (order approving SR-NASD-2001-044). The language of Rule 6540(d)(1)(C) has been amended in the Manual.

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were solicited by the Commission in response to the publication of SR-NASD-2005-087. The Commission received five comment letters in response to the Federal Register publication of SR-NASD-2005-087. The comments were summarized and responded to in a separate letter that NASD submitted to the Commission.<sup>18</sup> Subsequently, the Commission received nine additional comment letters<sup>19</sup> that raised issues relating to the Trade Reporting Facility, and NASD submitted an additional response.<sup>20</sup> Specifically, the commenters stated that they believe that through the Trade Reporting Facility, Nasdaq will receive economic benefits of off-exchange trades that the law mandates must be reported elsewhere and as a result, other markets and market participants may be at a competitive disadvantage and have to follow

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<sup>18</sup> See supra note 5.

<sup>19</sup> See Letter dated December 13, 2005 from Hon. Richard H. Baker, Chairman, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises; Letter dated December 14, 2005 from Hon. Jim Gerlach, Member of Congress; Letter dated December 22, 2005 from Hon. Patrick T. McHenry, Member of Congress; Letter dated January 3, 2006 from Hon. Michael E. Capuano, Member of Congress; Letter dated January 12, 2006 from Hon. Edolphus Towns, Member of Congress; Letter dated January 16, 2006 from Hon. Melissa L. Bean, Member of Congress; Letter dated February 9, 2006 from Hon. Geoff Davis, Member of Congress; Letter dated February 10, 2006 from Bart J. Ward, Chief Executive Officer, Ward & Company; and Letter to Hon. Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated April 27, 2006 from John Thain, Chief Executive Officer, NYSE Group.

<sup>20</sup> See Letter to Hon. Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated May 2, 2006 from Robert Glauber, Chairman and Chief Executive Officer, NASD.

suit in order to compete. Commenters also suggest that the Trade Reporting Facility may in some way permit NASD members to disregard the open market when executing trades. In addition, one commenter believes that reporting trades to the Trade Reporting Facility could create a mistaken sense of an exchange's liquidity and depth of market.

NASD has reviewed the response to comments it submitted to the Commission by letters dated November 23, 2005 and May 2, 2006 and believes that they adequately address the issues raised by the additional comment letters. Among other things, the November 23, 2005 letter states that the Trade Reporting Facility will be a facility of NASD and subject to NASD's registration as a national securities association. NASD will have regulatory responsibility for trades reported to the Trade Reporting Facility, while Nasdaq will provide systems to enable broker-dealers to report trades to the Trade Reporting Facility. These trades will not be Nasdaq exchange trades and will not be identified to the consolidated tape as such. Specifically, Trade Reporting Facility transactions will be disseminated to the media with a modifier indicating the source of such transactions that distinguishes them from transactions executed on or through the Nasdaq Stock Market. Further, nothing in the proposed rule change would preclude NASD from entering into similar arrangements with other national securities exchanges, as appropriate. In fact, the May 2, 2006 letter notes that NASD is currently in discussions with a number of exchanges regarding creating Trade Reporting Facilities on similar terms to the NASD/NASDAQ Trade Reporting Facility, and NASD is prepared to implement a Trade Reporting Facility with any exchange based on whatever technology the exchange has available to it. The November 23, 2005 letter also reiterates that NASD

members are subject to, among others, NASD Rule 2320 and the “Order Protection Rule” under Regulation NMS, once implemented. As such, members using the Trade Reporting Facility would not be permitted to disregard the open market.

**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.<sup>21</sup>

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

NASD requests the Commission to find good cause pursuant to Section 19(b)(2)<sup>22</sup> of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because NASD believes the proposed rule change relating to quoting and trading of Nasdaq securities was encompassed in the original filing previously noticed for comment by the Commission and the proposed requirements relating to the quoting, trading and execution of exchange-listed securities are substantially similar to the rules and requirements that apply to NASD members today, NASD requests the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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

Not applicable.

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<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

**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 3 shows the text of the LLC Agreement marking changes from the originally filed Agreement, with the original language shown as if adopted, and the new language marked to show additions and deletions.

Exhibit 4. Exhibit 4 shows the full text of rule change marking changes from the originally filed proposed rule change, with the original language changes shown as if adopted, and the new language marked to show additions and deletions.

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: National Association of Securities Dealers, Inc.; Notice of Filing and Accelerated Approval of Proposed Rule Change To Reflect Nasdaq's Separation from NASD Upon Nasdaq's Operation as a National Securities Exchange

On July 11, 2005, National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On , NASD filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

**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, Nasdaq By-Laws and NASD rules to reflect NASD's and The Nasdaq Stock Market, Inc.'s ("Nasdaq") proposed implementation strategy for the operation of The NASDAQ Stock Market LLC (the "Nasdaq Exchange") as a national securities exchange for Nasdaq-listed securities

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

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

only during a transitional period, to make certain changes to the rules that govern quoting and trading through the NASD Alternative Display Facility (“ADF”), and to establish rules for trading otherwise than on an exchange through the new Trade Reporting Facility.

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

**Rule Filing History**

On July 11, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-087, which, among other things, proposed amendments to NASD’s Delegation Plan, By-Laws and NASD rules to reflect Nasdaq’s separation from NASD

upon the Nasdaq Exchange's operation as a national securities exchange<sup>3</sup> (the "original filing"). On July 22, 2005, the Commission published for comment the proposed rule change in the Federal Register.<sup>4</sup> The Commission received five comment letters, two of which were from the same commenter, in response to the publication of the proposed rule change in the Federal Register.<sup>5</sup> The commenters raised several issues relating to the proposed rule change that were summarized and responded to in a separate letter that NASD submitted to the Commission.<sup>6</sup>

NASD is filing this Amendment No. 1 to SR-NASD-2005-087 ("Amendment No. 1") to propose the following changes to the original filing: (1) amendments to retain NASD's delegation to Nasdaq relating to the operation of trading and quoting platforms and associated linkages with respect to New York Stock Exchange ("NYSE") and

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<sup>3</sup> The SEC approved the Nasdaq Exchange application on January 13, 2006. See Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006). See also Exchange Act Release No. 52559 (Oct. 4, 2005), 70 FR 59097 (Oct. 11, 2005) and Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10-131).

<sup>4</sup> See Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005).

<sup>5</sup> See Letters dated August 12, 2005 and November 10, 2005 from Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. (NYSE); Letter dated October 13, 2005 from Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc.; Letter dated November 4, 2005 from John Boese, Vice President and Chief Regulatory Officer, Boston Stock Exchange (BSE); and Letter dated November 10, 2005 from Kevin J. P. O'Hara, Chief Administrative Officer and General Counsel, of Archipelago Holdings, Inc. (Arca).

<sup>6</sup> See Letter dated November 23, 2005, from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD. As discussed below, the Commission received nine additional comment letters, as well as an additional response from NASD, after NASD had submitted its initial response to comments.



American Stock Exchange (“Amex”) securities (“non-Nasdaq exchange-listed securities”) for a transitional period of time; (2) clarifying changes relating to the ADF rules; (3) clarifying changes relating to the Trade Reporting Facility rules and the Limited Liability Company Agreement of The Trade Reporting Facility LLC between Nasdaq and NASD (the “LLC Agreement”); (4) reinstatement of the Rule 9700 Series relating to the process for grievances related to automated systems, which was proposed to be deleted in the original filing; and (5) other corrections and technical changes.

### **Quoting and Trading of Non-Nasdaq Exchange-listed Securities**

NASD is proposing amendments to NASD rules that would retain its current delegation to Nasdaq relating to the operation of over-the-counter (“OTC”) quotation and trading facilities for non-Nasdaq exchange-listed securities for a limited period of time. Specifically, to facilitate an orderly transition and minimize any potential disruption to the marketplace, for a transitional period, the Nasdaq Exchange has proposed to operate as an exchange for purposes of Nasdaq-listed securities only, while Nasdaq continues to perform its current obligations under the NASD’s Delegation Plan with respect to non-Nasdaq exchange-listed securities.<sup>7</sup> During this transitional period, NASD would retain its control of Nasdaq through the Preferred D share. The Nasdaq By-Laws, the provisions of the Delegation Plan that delegate to Nasdaq responsibility for the operation

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<sup>7</sup> See Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Nancy M. Morris, Secretary, Commission (March 31, 2006) (available at [www.sec.gov/rules/other/2006/10-131-nasdaq033106.pdf](http://www.sec.gov/rules/other/2006/10-131-nasdaq033106.pdf)).

of quotation and trading facilities for non-Nasdaq exchange-listed securities and all current rules relating to such activities also would remain in effect, as amended herein.<sup>8</sup>

Any such transitional period would end following SEC approval of a separate NASD filing, which NASD intends to submit in the near future, proposing OTC quoting and trade reporting requirements for non-Nasdaq exchange-listed securities (the “Non-Nasdaq OTC Filing”). Thus, if the Non-Nasdaq OTC Filing is approved before the date upon which the Nasdaq Exchange begins to operate for trading Nasdaq-listed securities, the Nasdaq Exchange may operate for all securities at a single point in time or for Nasdaq-listed securities only for a transitional period of up to 60 days following SEC approval of the Non-Nasdaq OTC Filing. Decisions as to operational dates and the extent of any transitional period will be made with a view to balancing transitional impact on NASD, the Nasdaq Exchange and market participants.

To effectuate this transitional period, current NASD rules governing the quoting, trading and execution of exchange-listed securities would remain substantially the same as they are today.<sup>9</sup> The proposed amendments described herein generally would maintain the current Rule 4700 (Nasdaq Market Center – Execution Services), 4900 (Brut System), 4950 (INET System), 5200 (Intermarket Trading System/Computer Assisted Execution System), 6300 (Consolidated Quotation Services (CQS)), 6400 (Reporting Transactions

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<sup>8</sup> When the Nasdaq Exchange begins to trade non-Nasdaq exchange-listed securities, the retained delegation and the rules governing trading of non-Nasdaq exchange-listed securities through Nasdaq will be eliminated, and the Preferred D Share will be cancelled. These changes will be made through a separate filing with the SEC, as described in more detail below.

<sup>9</sup> Among other technical and conforming changes to these rules, the term Nasdaq Market Center has been deleted to avoid confusion, given that the term is used with respect to the Nasdaq Exchange.

in Listed Securities)<sup>10</sup> and 11890 (Clearly Erroneous Transactions) Series, and IM-4400 (Impact of Non-Designation of Certain Dually Listed Securities), which were proposed to be revised or deleted in the original filing.<sup>11</sup> The proposed amendments also would add Rule 6431, which describes Nasdaq's trade halt authority with respect to non-Nasdaq exchange-listed securities. Previously, this trade halt authority was contained in Rule 4120, but because that provision was renumbered in the original filing and now relates only to the Trade Reporting Facility, the proposed rule change proposes a separate rule for trading halts in non-Nasdaq exchange-listed securities.

With respect to the Rule 4700 Series, which provides the order entry and execution requirements for the Nasdaq Market Center, including its SuperIntermarket ("SIM") system for non-Nasdaq exchange-listed securities, the proposed rule change would retain those rules that apply or relate to the quoting, trading and execution of non-Nasdaq exchange-listed securities. Accordingly, the proposed rule change deletes

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<sup>10</sup> The Rule 6400 Series addresses over-the-counter trade reporting requirements for non-Nasdaq exchange-listed securities. Nasdaq will continue to use the Automated Confirmation Transaction Service (ACT) for purposes of the Rule 6400 Series and will be acting pursuant to the NASD Delegation Plan in performing this function. ACT also will be used for trade reporting through the Trade Reporting Facility pursuant to the Rule 4000 series. In addition, ACT will be used with respect to the trade reporting requirements associated with the OTC Reporting Facility; however, Nasdaq will be providing NASD the use of ACT for this purpose via a services agreement.

<sup>11</sup> In the original filing, NASD proposed a new Rule 5200 that would prohibit members from executing otherwise than on an exchange a 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. This proposed rule prohibits the same conduct as current Rule 6440(i). Therefore, NASD is proposing to delete Rule 6440(i). In addition, because NASD is no longer deleting the current Rule 5200 Series as part of this Amendment No. 1, NASD is proposing to renumber proposed new Rule 5200 as Rule 5110.

Nasdaq Market Center rules, functionality and processes that apply or relate only to the quoting and trading of Nasdaq securities, as those securities would not be traded through SIM during a transitional period.

Similar changes have been proposed with respect to the Rule 4900 and 4950 Series, which provide the order entry and execution requirements for the Brut and Inet systems, respectively. Brut and Inet are currently separate trading platforms owned and operated by Brut L.L.C., a registered broker-dealer that is a member of the NYSE and NASD and a wholly owned subsidiary of Nasdaq. Although owned by a broker-dealer, the trading platforms are also currently facilities of NASD, operated by Nasdaq under the Delegation Plan for trading Nasdaq-listed and non-Nasdaq exchange-listed securities. The proposed rule change deletes Brut and Inet rules, functionality and processes that apply or relate only to the quoting and trading of Nasdaq securities. During any transitional period, Brut and Inet would quote and trade non-Nasdaq exchange-listed securities as facilities of NASD subject to the Delegation Plan. Brut's quotes for securities listed on NYSE and Amex would be posted and accessible through SIM, as would Inet's quote for Amex-listed stocks. To the extent that Brut and Inet both quote the same stock through SIM, they are represented by separate market participant identifiers ("MPIDs") registered in the name of Brut L.L.C. Inet's quotes for NYSE-listed stocks are currently posted and accessible through the National Stock Exchange ("NSX"), but are now in the process of being transferred to SIM on a security-by-security basis. Accordingly, Inet may quote these stocks in both NSX and SIM, depending on the progress of this transfer.

As an ITS/CAES Market Maker in the stocks it quotes in SIM, Brut L.L.C. is required to ensure that all trades that it executes in these stocks comply with the provisions of the Intermarket Trading System (“ITS”) Plan applicable to ITS/CAES Market Makers, including trade-through obligations. Brut L.L.C.’s obligations as an ITS/CAES Market Maker extend to all trades that it executes through the Brut or Inet platforms in these stocks. Accordingly, Brut L.L.C. has programmed both systems to avoid trade-throughs in all circumstances, regardless of whether liquidity is accessed through SIM or through direct connections to the trading platforms.

With respect to Rule 11890, in the original filing, NASD proposed to delete Rule 11890 in its entirety as relating exclusively to participation in, and the operation of, a market. To the extent that Nasdaq will continue to be operating SIM during a transitional period, the proposed rule change retains those provisions in Rule 11890 that relate to Nasdaq’s clearly erroneous authority, but only to the extent those provisions apply to non-Nasdaq exchange-listed securities. Specifically, as amended, Rule 11890(a) provides Nasdaq authority to review transactions in non-Nasdaq exchange-listed securities pursuant to a complaint by a market participant relating to the use or operation of any execution or communication system owned or operated by Nasdaq. Rule 11890(b)(1) provides Nasdaq the authority to review transactions in non-Nasdaq exchange-listed securities on its own motion in the event of a disruption or malfunction in the use of a Nasdaq system or due to extraordinary market conditions.

In addition, on October 1, 2005, NASD assumed direct authority for OTC equities operations, in place of a delegation to Nasdaq.<sup>12</sup> As part of this change, NASD amended Rule 11890(b) to provide NASD, rather than Nasdaq, authority to declare, on its own motion, clearly erroneous transactions in OTC equity securities (e.g., OTCBB and Pink Sheets securities) in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. NASD is proposing to retain this authority.

Upon further consideration, NASD also is proposing to amend Rule 11890 to provide NASD with similar clearly erroneous authority with respect to all transactions in Nasdaq securities reported to NASD. Currently, this authority is delegated to Nasdaq with respect to trades reported through Nasdaq's ACT. There currently is no such authority with respect to trades reported to the ADF. The proposed amendments would provide NASD the authority to declare, on its own motion, clearly erroneous transactions in Nasdaq securities reported to the ADF or the Trade Reporting Facility in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. NASD believes that in very limited circumstances it may be appropriate for NASD to have and use such authority, for example, where there is an extraordinary event and multiple self-regulatory organizations are canceling or modifying trades.<sup>13</sup>

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<sup>12</sup> See Securities Exchange Act Release No. 52508 (Sept. 26, 2005), 70 FR 57346 (Sept. 30, 2005) (SR-NASD-2005-089).

<sup>13</sup> In addition, the proposed rule change amends Section IV of the Delegation Plan related to StockWatch to clarify that StockWatch no longer performs the trading halt functions for securities quoted in the OTCBB pursuant to the Delegation Plan. That function is performed by NASD. Similarly, functions relating to the Uniform Practice Code are no longer delegated to the Nasdaq Board, and the

### **Proposed Clarifying Changes Relating to the ADF Rules**

NASD also is proposing several technical and clarifying changes to make the ADF and Trade Reporting Facility rules more consistent, where appropriate, for example, trade halt authority, trade reporting exclusions and the reporting of cancelled trades.

NASD also is proposing to delete Rule 4611A(c) and (d) relating to electronic registration by ADF market makers because the ADF system currently does not use such a procedure. In proposed Rule 4632A(a)(2)(B)(i), NASD is proposing to retain the current requirement with respect to reporting transactions in ADF-eligible securities that are executed between midnight and 8:00 a.m. In the original filing, NASD proposed to amend this requirement to allow such trades to be reported until 6:30 p.m. Although the ADF system is capable of accepting trade reports after 9:30 a.m., NASD is proposing to retain the current requirement that a member must report such trades prior to 9:30 a.m., such that trades reported after 9:30 a.m. will continue to be considered late.

In addition, SEC staff has requested further clarification of which rules proposed in the original filing apply not only to Registered Reporting ADF market makers, but to Registered Reporting ADF ECNs as well. These are the following: Rule 4613A(b), relating to firm quote requirements; Rule 4617A, relating to normal business hours; Rule 4618A, relating to clearance and settlement requirements; and Rule 4621A and 4622A relating to NASD's ability to suspend or terminate quotations or ADF services.

SEC staff also requested further clarification of the proposed amendments to Rule 4619A, such that ADF participants, which today consists of solely of Registered

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change has been made accordingly to Article XIV, Section 2 of the NASD By-laws.

Reporting ECNs, would not have the ability to act in the capacity of a passive market maker. Passive market making is used by market makers that are participating in a secondary offering of a security in conformity with Regulation M and pertinent SEC Rules. For purposes of ADF, NASD does not believe there is a need for a passive market making rule. Accordingly, if a market maker were, in the future, to quote in the ADF and participate in a secondary offering of a security, the ADF market maker would be required to stop quoting in the ADF in conformity with Regulation M and pertinent SEC Rules.

#### **Proposed Changes Relating to the Trade Reporting Facility Rules and the LLC Agreement**

As described in more detail in the original filing, NASD is proposing to establish the Trade Reporting Facility, which will provide members another mechanism for reporting transactions effected otherwise than on an exchange.<sup>14</sup> In addition to several technical and clarifying changes, NASD is proposing to delete the provisions in the Rule 6100 Series relating to UTP exchange access to the Trade Reporting Facility, given that UTP exchanges do not currently use Nasdaq's ACT and, therefore, will not require access to the Trade Reporting Facility. NASD also is proposing to delete proposed Rule 4644, which provides that only convertible debt listed on Nasdaq equaling 99 bonds or less will be disseminated by the Trade Reporting Facility. Today, all transactions in Nasdaq-listed convertible debt, irrespective of size, are disseminated and the Trade

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<sup>14</sup> As also noted in the original filing, NASD will have an integrated audit trail of Trade Reporting Facility and ADF transactions and will have integrated surveillance capabilities. NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by third quarter 2006. Prior to that time, NASD staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.



Reporting Facility will continue to maintain the status quo.<sup>15</sup> Finally, NASD is noting, as it did in its original filing, that the proposed rule change 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 rule filing with the SEC.

NASD also has made several clarifying changes to the LLC Agreement. Specifically, Sections 1 through 5 have been finalized to reflect the name, registered office and registered agent for the new entity. Section 9(v) has been changed to delete the reference to Nasdaq Marketwatch. Section 10 has been changed to reflect that the Business Member may designate as Directors not only persons who are directors, officers or employees of the Business Member but also those who are directors, officers or employees of an Affiliate. Finally, Section 20 has been changed to reflect that in the event of termination, the parties shall negotiate in good faith to allow the Business Member to operate under the SRO license of either the Business Member or one of its Affiliates. The schedules to the LLC Agreement also have been updated to reflect the initial officers of the LLC and Nasdaq's capital contribution.

#### **Rule 9700 Series Related to Grievances Concerning Automated Systems**

The Rule 9700 Series currently sets forth procedures to address unspecified general grievances related to any automated quotation, execution or communication system operated by NASD or Nasdaq. In the original filing, NASD proposed to delete Rule 9700 in its entirety as relating exclusively to participation in and the operation of

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<sup>15</sup> NASD also is proposing to delete the comparable provision in the ADF rules, Rule 4632A(1).

Nasdaq. However, because the Rule 9700 Series governs, among other things, review requests of OTCBB eligibility determinations under Rule 6530, NASD is proposing to retain the Rule 9700 Series. Throughout the Rule 9700 Series, references to Nasdaq and Nasdaq systems have been deleted and/or replaced with NASD or NASD systems, as appropriate. With respect to Rule 9760, which currently relates to the review of decisions by the Nasdaq Listing and Hearing Review Council (“Council”), NASD is proposing to replace the references to the Council with a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members. This proposed change is intended to ensure the new committee designated to perform this function retains the current non-industry composition of the Council.

#### **Other Corrections and Subsequent Changes to the Manual**

A number of grammatical, capitalization and other technical, non-substantive changes are proposed in this Amendment No. 1. In addition, a number of rule changes have been approved by the SEC and implemented between the time that NASD filed the original filing and this amendment that amended the underlying text provided in Exhibit 5 of the original filing. These include the following rule changes along with the rules affected: SR-NASD-2005-089 amended the Delegation Plan and Rule 6545; SR-NASD-2005-103 amended Rule 3110 and IM-3110; SR-NASD-2005-108 amended Rules 4200, 4200A and 5410 (updated deleted text); SR-NASD-2005-092 and SR-NASD-2006-050 (both filed for immediate effectiveness) amended Rule 4100A; SR-NASD-2005-149 amended Rule 3350 (renumbered in this amendment as Rule 5100); SR-NASD-2006-004 (filed for immediate effectiveness) extended the pilot program under Rule 5266(b); SR-NASD-2005-124 (filed for immediate effectiveness) repealed Rule 6440(f); SR-NASD-

2004-009, SR-NASD-2005-089, and SR-NASD-2005-115 amended Rule 11890. The underlying text used in both Exhibits 4 and 5 has been updated to reflect these changes.

In one instance, proposed new paragraph (I) of Rule 6954(c)(6) was inadvertently not underlined in the original filing to indicate new text, but has been so marked in both Exhibit 4 and 5. Clarifying changes also are made to that provision as part of this amendment. There also were instances of incorrect rule text filed in the original filing in the Delegation Plan, By-Laws of NASD Regulation, Rules 2520, 2810, 2860, 4632A, 5430 (although NASD is proposing to delete this text), 6420, 6620, 6750 (renumbered in this amendment as 6650), and 9231. In addition, Rule 5333 and the Rule 5100 Series previously should have been deleted from the NASD Manual, but inadvertently were not.<sup>16</sup> Similarly, amendments to Rule 6540(d)(1)(C) inadvertently were not incorporated

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<sup>16</sup> With respect to Rule 5333 (Quotations in PORTAL Securities), NASD proposed adoption of the rule in SR-NASD-99-66. However, in response to comments, NASD deleted the rule in a subsequent amendment and the SEC approved SR-NASD-99-66, as amended, in March 2001. See Exchange Act Release No. 44042 (March 6, 2001), 66 FR 14969 (March 14, 2001). Accordingly, Rule 5333 has been deleted from the Manual.

With respect to the Rule 5100 Series, the SEC originally approved operation of the Nasdaq International Service and NASD Rule 5100 Series (the Nasdaq International Service Rules) in October 1991 on a pilot basis. See Exchange Act Release No. 29812 (Oct. 11, 1991), 56 FR 52082 (Oct. 17, 1991) (File No. SR-NASD-90-33). The Service was launched on January 20, 1992, and the pilot period was subsequently extended through October 9, 2003. See Exchange Act Release No. 46589 (Oct. 2, 2002), 67 FR 63001 (Oct. 9, 2002) (File No. SR-NASD-2002-130). The pilot period was never extended after that date; however, the rule text inadvertently was not removed from the NASD Manual upon expiration of the pilot period. Accordingly, the Nasdaq International Service Rules have been deleted from the Manual.

in the NASD Manual at the time they were approved.<sup>17</sup> The underlying text used in both Exhibits 4 and 5 has been corrected to reflect these inaccuracies.

The effective date of the proposed rule change will be the date upon which the Nasdaq Exchange begins to operate for Nasdaq-listed securities.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</sup> 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**

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were solicited by the Commission

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<sup>17</sup> In 1997, the Commission approved proposed amendments to Rule 6540(b)(1)(C). See Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997) (order approving SR-NASD-92-7). Subparagraph (b) of Rule 6540 was later renumbered to (d), with no change to the rule text of that subparagraph. See Exchange Act Release No. 45915 (May 10, 2002), 67 FR 35171 (May 17, 2002) (order approving SR-NASD-2001-044). The language of Rule 6540(d)(1)(C) has been amended in the Manual.

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

in response to the publication of SR-NASD-2005-087. The Commission received five comment letters in response to the Federal Register publication of SR-NASD-2005-087. The comments were summarized and responded to in a separate letter that NASD submitted to the Commission.<sup>19</sup> Subsequently, the Commission received nine additional comment letters<sup>20</sup> that raised issues relating to the Trade Reporting Facility, and NASD submitted an additional response.<sup>21</sup> Specifically, the commenters stated that they believe that through the Trade Reporting Facility, Nasdaq will receive economic benefits of off-exchange trades that the law mandates must be reported elsewhere and as a result, other markets and market participants may be at a competitive disadvantage and have to follow suit in order to compete. Commenters also suggest that the Trade Reporting Facility may in some way permit NASD members to disregard the open market when executing trades. In addition, one commenter believes that reporting trades to the Trade Reporting Facility could create a mistaken sense of an exchange's liquidity and depth of market.

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<sup>19</sup> See supra note 6.

<sup>20</sup> See Letter dated December 13, 2005 from Hon. Richard H. Baker, Chairman, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises; Letter dated December 14, 2005 from Hon. Jim Gerlach, Member of Congress; Letter dated December 22, 2005 from Hon. Patrick T. McHenry, Member of Congress; Letter dated January 3, 2006 from Hon. Michael E. Capuano, Member of Congress; Letter dated January 12, 2006 from Hon. Edolphus Towns, Member of Congress; Letter dated January 16, 2006 from Hon. Melissa L. Bean, Member of Congress; Letter dated February 9, 2006 from Hon. Geoff Davis, Member of Congress; Letter dated February 10, 2006 from Bart J. Ward, Chief Executive Officer, Ward & Company; and Letter to Hon. Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated April 27, 2006 from John Thain, Chief Executive Officer, NYSE Group.

<sup>21</sup> See Letter to Hon. Christopher Cox, Chairman, U.S. Securities and Exchange Commission, dated May 2, 2006 from Robert Glauber, Chairman and Chief Executive Officer, NASD.

NASD has reviewed the response to comments it submitted to the Commission by letters dated November 23, 2005 and May 2, 2006 and believes that they adequately address the issues raised by the additional comment letters. Among other things, the November 23, 2005 letter states that the Trade Reporting Facility will be a facility of NASD and subject to NASD's registration as a national securities association. NASD will have regulatory responsibility for trades reported to the Trade Reporting Facility, while Nasdaq will provide systems to enable broker-dealers to report trades to the Trade Reporting Facility. These trades will not be Nasdaq exchange trades and will not be identified to the consolidated tape as such. Specifically, Trade Reporting Facility transactions will be disseminated to the media with a modifier indicating the source of such transactions that distinguishes them from transactions executed on or through the Nasdaq Stock Market. Further, nothing in the proposed rule change would preclude NASD from entering into similar arrangements with other national securities exchanges, as appropriate. In fact, the May 2, 2006 letter notes that NASD is currently in discussions with a number of exchanges regarding creating Trade Reporting Facilities on similar terms to the NASD/NASDAQ Trade Reporting Facility, and NASD is prepared to implement a Trade Reporting Facility with any exchange based on whatever technology the exchange has available to it. The November 23, 2005 letter also reiterates that NASD members are subject to, among others, NASD Rule 2320 and the "Order Protection Rule" under Regulation NMS, once implemented. As such, members using the Trade Reporting Facility would not be permitted to disregard the open market.

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

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act<sup>22</sup> for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the proposed rule change relating to quoting and trading of Nasdaq securities was encompassed in the original filing previously noticed for comment by the Commission and the proposed requirements relating to the quoting, trading and execution of exchange-listed securities are substantially similar to the rules and requirements that apply to NASD members today.

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**

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number NASD-2005-087 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASD-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. Copies of such filing also will be available for inspection and copying at the principal office of NASD.



All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-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.<sup>23</sup>

Nancy M. Morris

Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

### EXHIBIT 3

Below is the text of the Limited Liability Company Agreement with the language proposed in the initial filing shown as though approved. New language proposed in this amendment is double underlined; proposed deletions are struck through.

## 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 April 27, 2005, 2006, is entered into by and between The Nasdaq Stock Market, Inc., a Delaware corporation (the “Business Member”), and ~~the~~ National Association of Securities Dealers, Inc., a Delaware non-stock corporation (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}~~ The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

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}~~ The Corporation

Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

5. Members.

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

6. Certificates.

~~[NAME TO COME]~~ John M. Yetter 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 or an Affiliate thereof. 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 of the Business Member or any Affiliate thereof, as the case may be, 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 [its](#) 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: [Christopher R. Concannon](#)  
Title: [Executive Vice President – Transaction Services](#)

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

By: \_\_\_\_\_  
Name: [T. Grant Callery](#)  
Title: [Executive Vice President and General Counsel](#)

## 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., [a Delaware corporation](#), 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 [April 27 2001](#), ~~2006~~, 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., [a Delaware non-stock corporation](#), 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	<a href="#">\$1,000,000</a>
National Association of Securities Dealers, Inc.	1735 K Street, N.W. Washington D.C. 20006	None

**SCHEDULE C**

Management Agreement

~~\_\_\_\_\_], 2005~~

[April 27\_\_\_\_\_], 2006

~~{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 ~~{Directors (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 April 27, 2006, 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.

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Name: [Christopher R. Concannon](#)

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Name: [Adena T. Friedman](#)

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Name: [Douglas H. Shulman](#)

**SCHEDULE D**

Initial Officers of ~~The Trade Reporting Facility LLC~~

<u>Name</u>	<u>Title</u>
<u>Brian Hyndman</u>	<del>President</del>
<u>Randall Hopkins</u>	<del>Vice President</del> <u>and Chief Operating Officer</u>
<u>Karen Peterson</u>	<del>Secretary</del> <u>Vice President</u>
<u>Ronald Hassen</u>	<u>Treasurer</u>



**EXHIBIT 4**

Below is the text of the proposed rule change with the changes proposed in the initial filing shown as though approved. New language proposed in this amendment 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”), and NASD Dispute Resolution, Inc. (referenced individually as “NASD Dispute Resolution”), and the controlled subsidiary The Nasdaq Stock Market, Inc. (referenced individually as “Nasdaq”) (referenced collectively as the “Subsidiaries”). The term “Association” shall refer to the NASD and the Subsidiaries collectively.

A. Other Defined Terms— 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. [For purposes of Section III herein, the term “other markets or systems” does not include markets or systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.]

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 [IV]V.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 [IV]V.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 [IV]V.

C. through D. No Change.

E. 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 [IV]V.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. through r. No Change.

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

t. No Change.

u. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for Nasdaq securities traded in the third market [for securities listed on a registered exchange,] and securities traded 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 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. Uniform Practice Code Committee

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

i. No Change.

ii. to advise the NASD Regulation Board 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,

b. No Change.

### **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 third market for non-Nasdaq securities listed on a registered exchange and the automated systems supporting it.

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 in the third market for non-Nasdaq securities listed on a registered exchange.

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 in the third market for non-Nasdaq securities listed on a registered exchange, (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 third market for non-Nasdaq securities listed on a registered exchange.

f. To establish standards for participation in the third market for non-Nasdaq securities listed on a registered exchange, and determine in accordance with Association and Nasdaq procedures if: (i) persons seeking to participate in such market have met the standards established for participants; and (ii) persons participating in such market continue to meet the standards established for participants.

g. To establish and assess fees for the products and services offered by Nasdaq.

h. To establish the annual budget and business plan for Nasdaq.

i. To determine allocation of Nasdaq resources.

j. To manage external relations on matters related to trading on and the operation and functions of the market and systems operated by Nasdaq with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

k. 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. 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; or (b) raises significant policy issues in the view of the Nasdaq Board, and the Nasdaq Board refers the rule change to the NASD Board. 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.

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 under the Delegation Plan:

(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 third market for non-Nasdaq securities listed on a registered exchange from the perspective of investors, both individual

and institutional, retail firms, market making firms, and other participants therein.

(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, 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 Rules 5265 and 11890 of the Rules of the Association in accordance with the procedures specified therein with respect to non-Nasdaq securities listed on a registered exchange. NASD Regulation shall receive weekly reports of all determinations made by the



staff or MORC under Rules 5265 and 11890 with respect to non-Nasdaq securities listed on a registered exchange, 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.

#### **[III]IV. Stockwatch**

The Stockwatch section handles the trading halt functions for non-Nasdaq 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.

#### **[IV]V. 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.;

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

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

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

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

[(aa)](bb) "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;

[(bb)](cc) "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;

[(cc)](dd) "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;

[(dd)](ee) "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;

[(ee)](ff) "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;

[(ff)](gg) "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;

[(gg)](hh) "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**

**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.

**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 XV**

### **LIMITATION OF POWERS**

**Sec. 1.** through **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)** No Change.

(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.

\* \* \* \* \*

## **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.;

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

[(r)](s) "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;

[(s)](t) "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;

[(t)](u) "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;

[(u)](v) "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.

\* \* \* \* \*

**ARTICLE I**  
**DEFINITIONS**

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

(a) No Change.

(b) "Board" means the Board of Directors of [Nasdaq]the Corporation;

(c) through (d) No Change.

(e) "Corporation" means The Nasdaq Stock Market, Inc.;

(f) "day" means calendar day;

[(f)](g) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

[(g)](h) "Delaware law" means the General Corporation Law of the State of

Delaware;

[(h)] "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;]

(i) "Director" means a member of the Board[, excluding the Chief Executive Officer of the NASD;]

(j) "Industry Director" or "Industry committee member" means a Director (excluding any two officers of [Nasdaq]the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")) or [Nasdaq Listing and Hearing Review Council or] committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not

engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the [NASD, NASD Regulation, Nasdaq, or Amex] Corporation or any affiliate thereof or to the NASD ([and]or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

(k) "NASD" means the National Association of Securities Dealers, Inc. and its

affiliates;

(l) ["Nasdaq" means The Nasdaq Stock Market, Inc.]"Nominating Committee" means that Nominating Committee appointed pursuant to these By-Laws;

(m) ["Nasdaq Listing and Hearing Review Council" means a body appointed by the Board pursuant to Article V of these By-Laws;] "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer or employee of an issuer of securities listed on the national securities exchange operated by The NASDAQ Stock Market LLC; or (3) any other individual who would not be an Industry Director or Industry committee member; and

(n) ["NASD Board" means the NASD Board of Governors; ]

(o) "NASD Regulation" means NASD Regulation, Inc.;

(p) "Nominating Committee" means the Nominating Committee appointed pursuant to these By-Laws;]

(q) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the Staff Directors) or Nasdaq Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;]

(r) "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;]

[(s) "Public Director" or "Public committee member" means a Director [or Nasdaq Listing and Hearing Review Council] or committee member who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or the NASD[, NASD Regulation, or Nasdaq];

[(t) "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;]

[(u) "Amex" means American Stock Exchange LLC.]

## **ARTICLE II**

### **OFFICES**

#### **Location**

**Sec. 2.1** The address of the registered office of [Nasdaq] the Corporation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation

Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. [Nasdaq] The Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of [Nasdaq] the Corporation may require.

### **Change of Location**

**Sec. 2.2** In the manner permitted by law, the Board or the registered agent may change the address of [Nasdaq]the Corporation's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

## **ARTICLE III**

### **MEETINGS OF STOCKHOLDERS**

#### **Annual Meetings of Stockholders**

**Sec. 3.1** (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to [Nasdaq]the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating Committee or (iii) by any stockholder of [Nasdaq]the Corporation who was a stockholder of record of [Nasdaq]the Corporation at the time the notice provided for in this Section 3.1 is delivered to the Secretary of [Nasdaq]the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 3.1.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of [Nasdaq]the Corporation and any such

proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by [Nasdaq]the Corporation). [For purposes of the first annual meeting of stockholders of Nasdaq held after 2000, the first anniversary of the 2000 annual meeting of stockholders shall be deemed to be May 15, 2001.] In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and [Rule 14a-11]the rules thereunder (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to

bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-Laws of [Nasdaq]the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on [Nasdaq]the Corporation's books, and of such beneficial owner, (B) the class and number of shares of capital stock of [Nasdaq]the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a representation that the stockholder is a holder of record of stock of [Nasdaq]the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of [Nasdaq]the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. [Nasdaq]The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of [Nasdaq]the Corporation.

(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary,

in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by [Nasdaq]the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by [Nasdaq]the Corporation.

### **Special Meetings of Stockholders**

**Sec. 3.2** Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to [Nasdaq]the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to [Nasdaq]the Corporation's notice of meeting (a) by or at the direction of the Board or the Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of [Nasdaq]the Corporation who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of [Nasdaq]the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event [Nasdaq]the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election

may nominate a person or persons (as the case may be) for election to such position(s) as specified in [Nasdaq]the Corporation's notice of meeting, if the stockholder's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

### **General**

**Sec. 3.3** (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of [Nasdaq]the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so

solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of [Nasdaq]the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by [Nasdaq]the Corporation.

(b) For purposes of this Article III, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by [Nasdaq]the Corporation with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in [Nasdaq]the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

### **Conduct of Meetings**

**Sec. 3.4** The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of [Nasdaq]the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

#### **General Powers**



**Sec. 4.1** The property, business, and affairs of [Nasdaq]the Corporation shall be managed by or under the direction of the Board. The Board may exercise all such powers of [Nasdaq]the Corporation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation, or these By-Laws[, or the Delegation Plan for the organization, development, and operation of electronic data processing and communications facilities, including computer hardware and software, for the purposes of: (a) supporting the operation, regulation, and surveillance of The Nasdaq Stock Market and other organized securities markets established for trading equity securities, debt securities, derivative instruments, or other financial products that may be developed; (b) supporting the efficient clearance and settlement of securities transactions; (c) supporting various elements of the national market system pursuant to Section 11A of the Act and the rules thereunder; (d) assisting the NASD in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act; and (e) supporting such other initiatives as the Board may deem appropriate.] To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to [Nasdaq]the Corporation's staff [in a manner not inconsistent with the Delegation Plan].

#### **Number of Directors**

**Sec. 4.2** No Change.

#### **Qualifications**

**Sec. 4.3** Directors need not be stockholders of [Nasdaq]the Corporation. The number of Non-Industry Directors, including at least one Public Director and at least one issuer

representative, shall equal or exceed the number of Industry Directors, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives.

### **Election**

**Sec. 4.4** Except as otherwise provided by law[, ] or these By-Laws[, or the Delegation Plan], after the first meeting of [Nasdaq]the Corporation at which Directors are elected, Directors of [Nasdaq]the Corporation shall be elected each year at the annual meeting of the stockholders, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefore, the Directors shall cause such election to be held as soon thereafter as convenient.

### **Resignation**

**Sec. 4.5** No Change.

### **Removal**

**Sec. 4.6** Any or all of the Directors may be removed from office at any time by the affirmative vote of at least 66 2/3 percent of the total voting power of the outstanding shares of capital stock of [Nasdaq]the Corporation entitled to vote generally in the election of directors, voting together as a single class.

### **Disqualification**

**Sec. 4.7** No Change.

### **Filling of Vacancies**

**Sec. 4.8** No Change.

## **Quorum and Voting**

**Sec. 4.9** No Change.

### **Regulation**

**Sec. 4.10** The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of [Nasdaq]the Corporation, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, [the Rules of the Association, or the By-Laws of the NASD,] as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to [Nasdaq]the Corporation by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of [Nasdaq]the Corporation, or in relying in good faith upon other records of [Nasdaq]the Corporation.

### **Meetings**

**Sec. 4.11** No Change.

#### **Notice of Meetings; Waiver of Notice**

**Sec. 4.12** (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to [Nasdaq]the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such

meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) through (c) No Change.

### **Committees**

**Sec. 4.13** (a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only [after]by the Board, after appropriate notice.

(b) [The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to Nasdaq by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, t]The Board may, by resolution or resolutions

adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [Nasdaq]the Corporation to the extent permitted by law [and not inconsistent with the Delegation Plan]. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [Nasdaq]the Corporation to be affixed to all papers that may require it.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [Nasdaq]the Corporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all [Nasdaq]the Corporation's property and assets; or recommending to the stockholders a dissolution of [Nasdaq]the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of [Nasdaq]the Corporation between meetings of the Board, and which may authorize the seal of [Nasdaq]the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the

whole Board. An Executive Committee member shall hold office for a term of one year.

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of [Nasdaq]the Corporation, including recommendations for [Nasdaq]the Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by [Nasdaq]the Corporation. A Finance Committee member shall hold office for a term of one year.

(f) The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of [Nasdaq]the Corporation. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year.

(g) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of four or five Directors, none of whom shall be officers or employees of [Nasdaq]the Corporation. A majority of the Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(ii) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular Nasdaq member, company, or

individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of Nasdaq to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.]

(h) The Board may appoint a Nominating Committee. The Nominating Committee shall nominate Directors for each vacant or new Director position on the Board [and members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Board].

(i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public committee members. If the Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of [Nasdaq]the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry committee members shall be current members of the [Nasdaq] Board.

(ii) through (iv) No Change.

(i) through (j) No Change.

(k) Upon request of the Secretary of [Nasdaq]the Corporation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of [Nasdaq]the Corporation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of [Nasdaq]the Corporation, and shall report immediately to the Secretary any change in such information.

#### **Conflicts of Interest; Contracts and Transactions Involving Directors**

**Sec. 4.14** (a) A Director [or a member of the Nasdaq Listing and Hearing Review Council or a committee] shall not directly or indirectly participate in any adjudication of the interests of any party if that Director [or Nasdaq Listing and Hearing Review 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 Nasdaq Listing and Hearing Review Council or committee member] shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between [Nasdaq]the Corporation and one or more of its Directors or officers, or between [Nasdaq]the Corporation 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, even though the disinterested Directors be less than a quorum; (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, even though the disinterested Directors be less than a quorum; 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 stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders.

**[Communication of Views Regarding NASD or NASD Regulation Election or Nomination]**

**[Sec. 4.15** Nasdaq, the Board, any committee, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director, committee member, or Nasdaq Listing and Hearing Review Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, or any committee. Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, any committee, and the Nasdaq staff shall not provide any

administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.]

**Action Without Meeting**

**Sec. 4.1[6]5** Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in accordance with applicable law.]

**[ARTICLE V]**

**[NASDAQ LISTING AND HEARING REVIEW COUNCIL]**

**[Appointment and Authority]**

**[Sec. 5.1** The Board shall appoint a Nasdaq Listing and Hearing Review Council. The Nasdaq Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to listing decisions. The Nasdaq Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Nasdaq Listing and Hearing Review Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.]

**[Number of Members and Qualifications]**

**[Sec. 5.2** (a) The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than 18 members, of which not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing

Review Council shall include at least five Non-Industry members.]

[(b) As soon as practicable following the appointment of members, the Nasdaq Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.]

**[Nomination Process]**

**[Sec. 5.3** The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information]

**[Term of Office]**

**[Sec. 5.4** (a) Beginning in January 2003, except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other

reason. Prior to January 2003, the term of office for each Nasdaq Listing and Hearing Review Council member shall be two years.]

[(b) The Nasdaq Listing and Hearing Review Council shall be divided into three classes. The term of office of those of the first class shall expire in January 2004, the term of office of those of the second class shall expire in January 2005, and the term of office of those of the third class shall expire in January 2006. Beginning in January 2003, members shall be appointed for a term of three years to replace those whose terms expire.]

[(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.]

#### **[Resignation]**

[Sec. 5.5 A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.]

#### **[Removal]**

[Sec. 5.6 Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.]

#### **[Disqualification]**

[Sec. 5.7 Notwithstanding Section 5.4, the term of office of a Nasdaq Listing and

Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) The member no longer satisfies the classification (Industry or Non-Industry) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the Nasdaq Listing and Hearing Review Council set forth in Section 5.2. If the term of office of a Nasdaq Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing Review Council shall not be deemed to be in violation of Section 5.2 by virtue of such vacancy.]

**[Filling of Vacancies]**

**[Sec. 5.8** If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.]

**[Quorum and Voting]**

**[Sec. 5.9** At all meetings of the Nasdaq Listing and Hearing Review Council, unless otherwise set forth in these By-Laws, a quorum for the transaction of business shall consist of a majority of the Nasdaq Listing and Hearing Review Council, including one Non-Industry member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.]

**[Meetings]**

**[Sec. 5.10** The members of the Nasdaq Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.]

**ARTICLE VI**

**COMPENSATION**

**Compensation of Board[, Council, and Committee] Members**

**Sec. 6.1** The Board may provide for reasonable compensation of the Chair of the Board[, ] and the Directors[, Nasdaq Listing and Hearing Review Council members, and the members of any committee]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of [Nasdaq]the Corporation.

**ARTICLE VII**

**OFFICERS, AGENTS, AND EMPLOYEES**

**Principal Officers**

**Sec. 7.1** The principal officers of [Nasdaq]the Corporation shall be elected by the Board and shall include a Chair, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the

principal officers, except the Chair of the Board, need be Directors of [Nasdaq]the Corporation.

### **Election of Principal Officers; Term of Office**

**Sec. 7.2** (a) The principal officers of [Nasdaq]the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.11(a). Failure to elect any principal officer annually shall not dissolve [Nasdaq]the Corporation.

(b) through (c) No Change.

### **Subordinate Officers, Agents, or Employees**

**Sec. 7.3** In addition to the principal officers, [Nasdaq]the Corporation may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the Chief Executive Officer, the President, or any officer designated by the Board, may from time to time determine. Agents and employees of [Nasdaq]the Corporation shall be under the supervision and control of the officers of [Nasdaq]the Corporation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

### **Delegation of Duties of Officers**

**Sec. 7.4** The Board may delegate the duties and powers of any officer of [Nasdaq]the Corporation to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

### **Resignation and Removal of Officers**

**Sec. 7.5** (a) No Change.

(b) Any officer of [Nasdaq]the Corporation may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with [Nasdaq]the Corporation.

### **Bond**

**Sec. 7.6** [Nasdaq]The Corporation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

### **Chair of the Board**

**Sec. 7.7** No Change.

### **Chief Executive Officer**

**Sec. 7.8** The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board and stockholders at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of [Nasdaq]the Corporation and shall have general supervision over the business and affairs of [Nasdaq]the Corporation. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

### **President**

**Sec. 7.9** The President shall, in the absence of the Chair of the Board and the Chief



Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs of [Nasdaq]the Corporation. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

#### **Vice President**

**Sec. 7.10** No Change.

#### **Secretary**

**Sec. 7.11** The Secretary shall act as Secretary of all meetings of the stockholders and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of [Nasdaq]the Corporation, and shall have supervision over the care and custody of the corporate records and the corporate seal of [Nasdaq]the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of [Nasdaq]the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

#### **Assistant Secretary**

**Sec. 7.12** No Change.

### **Treasurer**

**Sec. 7.13** The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of [Nasdaq]the Corporation and shall cause the funds of [Nasdaq]the Corporation to be deposited in the name of [Nasdaq]the Corporation in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of [Nasdaq]the Corporation. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

### **Assistant Treasurer**

**Sec. 7.14** No Change.

## **ARTICLE VIII**

### **INDEMNIFICATION**

#### **Indemnification of Directors, Officers, Employees, and Agents[, Nasdaq Listing and Hearing Review Council and Committee Members]**

**Sec. 8.1** (a) [Nasdaq]The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of [Nasdaq]the Corporation [or a Nasdaq Listing and Hearing Review Council or committee member], or is or was a Director, officer, or employee of [Nasdaq]the Corporation who is or was serving at the

request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of [Nasdaq]the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of [Nasdaq]the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) [Nasdaq]The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) [Nasdaq]The Corporation may, in its discretion, indemnify and hold harmless, to

the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of [Nasdaq]the Corporation or is or was an agent of [Nasdaq]the Corporation who is or was serving at the request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) [Nasdaq]The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by [Nasdaq]the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did

not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of [Nasdaq]the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to [Nasdaq]the Corporation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, [Nasdaq Listing and Hearing Review Council or committee member,] employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), [Nasdaq]the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) [Nasdaq]The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) No Change.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been

received by [Nasdaq]the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, [Nasdaq]the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

### **Indemnification Insurance**

**Sec. 8.2** [Nasdaq]The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, [Nasdaq Listing and Hearing Review Council or committee member,] employee, or agent of [Nasdaq]the Corporation, or is or was serving at the request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not [Nasdaq]the Corporation would have the power to indemnify such person against such liability hereunder.

## **ARTICLE IX**

### **CAPITAL STOCK**

#### **Certificates**

**Sec. 9.1** Each stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [Nasdaq]the Corporation owned by such stockholder.

#### **Signatures**

**Sec. 9.2** (a) Certificates for shares of capital stock of [Nasdaq]the Corporation shall be signed in the name of [Nasdaq]the Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of [Nasdaq]the Corporation or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [Nasdaq]the Corporation or its employee, or by a registrar other than [Nasdaq]the Corporation or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [Nasdaq]the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

### **Stock Ledger**

**Sec. 9.3** (a) A record of all certificates for capital stock issued by [Nasdaq]the Corporation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) [Nasdaq]The Corporation shall be entitled to treat the holder of record of shares of

capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. [Nasdaq]The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [Nasdaq]the Corporation shall have express or other notice thereof.

### **Transfers of Stock**

**Sec. 9.4** (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of [Nasdaq]the Corporation. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [Nasdaq]the Corporation only upon delivery to [Nasdaq]the Corporation or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

### **Cancellation**

**Sec. 9.5** Each certificate for capital stock surrendered to [Nasdaq]the Corporation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 9.6 until such existing



certificate shall have been canceled.

### **Lost, Stolen, Destroyed, and Mutilated Certificates**

**Sec. 9.6** In the event that any certificate for shares of capital stock of [Nasdaq]the Corporation shall be mutilated, [Nasdaq]the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, [Nasdaq]the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to [Nasdaq]the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify [Nasdaq]the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

### **Fixing of Record Date**

**Sec. 9.7** No Change.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

#### **Corporate Seal**

**Sec. 10.1** The seal of [Nasdaq]the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of [Nasdaq]the Corporation, the year of its incorporation, and the words "Corporate Seal" and "Delaware." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

#### **Fiscal Year**

**Sec. 10.2** The fiscal year of [Nasdaq]the Corporation shall begin the 1st day of January in each year, or such other month as the Board may determine by resolution.

#### **Waiver of Notice**

**Sec. 10.3** No Change.

#### **Execution of Instruments, Contracts, Etc.**

**Sec. 10.4** (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [Nasdaq]the Corporation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of [Nasdaq]the Corporation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of

the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [Nasdaq]the Corporation by any principal officer or subordinate officer of [Nasdaq]the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of [Nasdaq]the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

### **Form of Records**

**Sec. 10.5** Any records maintained by [Nasdaq]the Corporation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

## **ARTICLE XI**

### **AMENDMENTS; EMERGENCY BY-LAWS**

#### **By Stockholders**

**Sec. 11.1** No Change.

#### **By Directors**

**Sec. 11.2** No Change.

#### **Review by The NASDAQ Stock Market LLC**

**Sec. 11.3** For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, any proposed adoption, alteration, amendment, change or repeal (an “amendment”) of any By-Law shall be submitted to the Board of Directors of The

NASDAQ Stock Market LLC (the “Exchange Board”), and if the Exchange Board determines that such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

### **Emergency By-Laws**

**Sec. 11.[3]4** The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [Nasdaq]the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

## **ARTICLE XII**

### **THE NASDAQ STOCK MARKET LLC**

#### **Self-Regulatory Organization Function of The NASDAQ Stock Market LLC**

**Sec. 12.1** (a) For so long as the Corporation shall control The NASDAQ Stock Market LLC, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of The NASDAQ Stock Market LLC and to its obligations to investors and the general public and

shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of The NASDAQ Stock Market LLC relating to its regulatory functions (including disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of The NASDAQ Stock Market LLC to carry out its responsibilities under the Act.

(b) All books and records of The NASDAQ Stock Market LLC reflecting confidential information pertaining to the self-regulatory function of The NASDAQ Stock Market LLC (including but not limited to disciplinary matters, trading data, trading practices and audit information) which shall come into the possession of the Corporation, and the information contained in those books and records, shall be retained in confidence by the Corporation and the Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. Nothing in these By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission. The Corporation's books and records shall be subject at all times to inspection and copying by the Commission. The Corporation's books and records relating to The NASDAQ Stock Market LLC shall be maintained in the United States.

(c) To the extent they are related to the activities of The NASDAQ Stock Market LLC, the books, records, premises, officers, Directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents

and employees of The NASDAQ Stock Market LLC for the purposes of, and subject to oversight pursuant to, the Act.

### **Cooperation with the Commission**

**Sec. 12.2** The officers, Directors, employees, and agents of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and The NASDAQ Stock Market LLC in respect of the Commission's oversight responsibilities regarding The NASDAQ Stock Market LLC and the self-regulatory functions and responsibilities of The NASDAQ Stock Market LLC.

### **Consent to Jurisdiction**

**Sec. 12.3** The Corporation and its officers, Directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and The NASDAQ Stock Market LLC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of The NASDAQ Stock Market LLC, and by virtue of their acceptance of any such position, shall be deemed to 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 it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission, or The NASDAQ Stock Market LLC, 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 of that suit, action or proceeding may not be enforced in or by such courts or agency.

The Corporation and its officers, Directors, employees and agents also agree that they will

maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of The NASDAQ Stock Market LLC.

**Further Assurances**

Sec. 12.4. The Corporation shall take such action as is necessary to insure that its officers, Directors, employees, and agents consent to the applicability of Sections 12.1(c) and 12.3 with respect to activities related to The NASDAQ Stock Market LLC.

**Board Action with Respect to Voting Limitations of the Certificate of Incorporation**

Sec. 12.5 For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Restated Certification Incorporation of the By-Laws shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under Section 19 of the Act.

\* \* \* \* \*

**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. and 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.

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## **2000. BUSINESS CONDUCT**

### **2100. GENERAL STANDARDS**

\* \* \* \* \*

#### **IM-2110-2. Trading Ahead of Customer Limit Order**

##### **(a) General Application**

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in [Nasdaq and] exchange-listed securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require

members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.<sup>1</sup>

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<sup>1</sup> No Change to Footnote Text.

Rule 2110 states that:

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

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

### **Interpretation**

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in [a Nasdaq or] an exchange-listed security and that continues to trade the subject security for its

own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than \$100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

As outlined in NASD Notice to Members 97-57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:

- If actual spread is greater than  $1/16$  of a point, a firm must price improve an incoming order by at least a  $1/16$ . For stocks priced under \$10 (which are quoted in  $1/32$  increments) , the firm must price improve by at least  $1/64$ .
- If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

- 1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is \$0.01; and
- 2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the member must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01)

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No Change.

\* \* \* \* \*

#### **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 an exchange-listed security traded otherwise than on an exchange or a derivative security based primarily on a specific 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 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 an exchange-listed security traded otherwise than on an exchange, 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.

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 an exchange-listed security traded otherwise than on an exchange or a derivative security based primarily upon a specific 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.

\* \* \* \* \*

**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 that:

(A) through (B) No Change.

(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; and

(ii) with respect to a security listed on the Nasdaq Stock Market LLC, 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 market maker with NASD or Nasdaq 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.

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

(c) through (p) No Change.

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**3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION**

**3110. Books and Records**

(a) through (d) No Change.

**(f) Requirements When Using Predispute Arbitration Agreements for**



**Customers Accounts**

(1) through (2) No Change.

(3) (A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this [Rule]paragraph, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) No Change.

(4) through (7) No Change.

(g) No Change.

**(h) Order Audit Trail System Record keeping Requirements**

(1) Each member that is a Reporting Member, as that term is defined in Rule 6951[(n)](m), shall record and maintain, with respect to each order, as that term is defined in Rule 6951[(j)](i), for such security that is received or executed at its trading department:

(A) through (C) No Change.

(2) No Change.

(i) through (j) 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 NASD closes trading in [Nasdaq securities]a security pursuant to its authority under Rule 4633(a)(3), [or] Rule 4120A(a)(3), or Rule 6431(a)(3) members would not be prohibited from trading through other markets for which trading is not halted.

(b) No Change.

\* \* \* \* \*

**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] Capital Market 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.

**4200. DEFINITIONS**

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

(1) No Change.

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

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

(4) through (8) renumbered (3) through (7)

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

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

(10) “Normal business hours” means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.

(11) No Change.

(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) through (16) No Change.

#### **4400. Trading of Certain Dually Listed Securities**

The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) permits issuers whose

securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq National Market ("NNM"). Nasdaq makes an independent determination of whether such issuers satisfy all applicable listing requirements and requires issuers to enter into a dual listing agreement with the Nasdaq Exchange.

Nasdaq does not exercise its authority under Nasdaq Exchange Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system plans ("CQ and CTA Plans"), remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. While such securities continue to trade through facilities of the NASD, NASD shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System ("ITS") shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Dually listed securities shall be treated as CQS securities under all NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating

potential confusion for investors and market participants that currently trade these securities on the ITS/CAES System.

For example, NASD shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 6431 governing CQS securities shall apply to dually listed securities. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 5100 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

#### **4618. Clearance and Settlement**

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

\* \* \* \* \*

#### **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 or if the Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the Operations Department, 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) through (10) No Change.

(b) No Change.

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) [Nasdaq] Stock symbol of the designated security;

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

(3) through (4) No Change.

(5) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included in the report.

(6) No Change.

**(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 or bonds 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 or bonds 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 or bonds 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) No Change.

**(e) Transactions Not Required To Be Reported**

The following types of transactions shall not be reported to the Trade Reporting

Facility:

(1) odd-lot transactions (except in the case of bonds);

(2) through (6) No Change.



**(f) Aggregation of Transaction Reports**

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

(A) through (D) No Change.

(2) No Change.

**(g) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with Rule 11890, [M]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) No Change.

\* \* \* \* \*

**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 otherwise than on an exchange in the Trade Reporting Facility 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) through (D) No Change.

(2) shall halt trading otherwise than on an exchange in the Trade Reporting Facility in a designated security when:

(A) through (C) No Change.

(3) shall close the Trade Reporting Facility to [trading] trade reporting 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] on other markets for which trading is not halted.

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

(b) No Change.

**[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.]

\* \* \* \* \*

**4700. ITS/CAES System — Execution Services**

**4701. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term "active securities" shall mean those eligible securities in which at least one ITS/CAES Market Maker is currently active in the system, or at least one exchange is actively quoting the security. A security will not be considered an "active security" when trading has been halted pursuant to Rule 6431.

(b) Reserved

(c) The term "Attributable Quote/Order" shall mean a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MPID once such Quote/Order becomes the participant's best attributable bid or offer.

(d) Reserved

(e) Reserved

(f) Reserved

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted by ITS/CAES Market Makers.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1-1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the system a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the system, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the system, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis in the order display service of the system. Order Entry Firms shall be eligible to enter Non-Attributable orders in eligible securities only if they are designated as Immediate or Cancel.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by a Participant and is not directed to any particular Quoting Market Participant, or ITS Exchange, and shall also include Preferred Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean an order that when delivered

imposes no obligation to respond to such order under the Firm Quote Rule. Only orders preferred to an ITS exchange can be non-liability orders.

(r) The term "system" shall mean the automated system for order execution and trade reporting in eligible securities, which comprises:

(1) an order execution service that enables Participants to execute transactions in active securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;

(2) a trade reporting service that, among other things, provides for the reporting of transactions in eligible securities; compares trade information entered by Participants and submits "locked-in" trades for clearing to the National Securities Clearing Corporation (NSCC) for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment;

(s) The term "eligible securities" shall mean ITS Securities as that term is defined in NASD Rule 5210(c).

(t) Reserved

(u) Reserved

(v) The term "Participant" shall mean an ITS/CAES Market Maker or Order Entry Firm registered as such with the Association for participation in the system.

(w) The term "Order Entry Firm" shall mean a member of the Association who is

registered as an Order Entry Firm for purposes of entering orders in active securities into the system.

(x) Reserved

(y) The term "Quoting Market Participant" shall include only ITS/CAES Market Makers.

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferred Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the Preferred Order is the next in line to be executed or delivered. Preferred Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to the system by a Quoting Market Participant that is displayed in the form of a single quotation. Orders entered by Order Entry Firms are not displayed.

(cc) Reserved

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is reduced by executions to

less than a normal unit of trading.

(ee) Reserved

(ff) Reserved

(gg) Reserved

(hh) The term "Day" shall mean, for orders so designated, that if after entry into the system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned to the entering party.

(ii) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(jj) Reserved

(kk) Reserved

(ll) The term "Fill or Return" shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges.

(mm) Reserved

(nn) The term "Discretionary" shall mean, for orders in eligible securities so designated, an order that when entered into the system has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an

eligible security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.

(oo) The term "Summary" shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by the system, it shall be rejected and returned to the entering party.

(pp) The term "ITS/CAES Market Maker" shall mean a member of the Association that is registered as an ITS/CAES Market Maker as defined in NASD Rule 5210(e) or as a CQS Market Maker as defined in NASD Rule 6320 for purposes of participation in the system with respect to one or more eligible securities, and is currently active in the system. ITS/CAES Market Makers shall be permitted to execute orders in eligible securities through the automatic execution or order delivery functionality of the system for the purchase or sale of active securities.

(qq) The term "ITS Exchange" shall mean a national securities exchange that participates in the ITS system as defined in Rule 5210. ITS Exchanges shall not be eligible to participate in the system. ITS Commitments sent by ITS Exchanges shall be processed by the system in accordance with the ITS Plan and all applicable NASD rules governing the participation in ITS. Quotes/Orders that are eligible for ITS will be processed by the system and delivered to the appropriate ITS Exchange as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable NASD rules.

(rr) The term "Sweep Order" shall mean, for orders so designated, an order that may be delivered to or executed by Quoting Market Participants at multiple price levels.



(ss) The term "Total Day" or "X Order" shall mean, for orders so designated, that if after entry into the system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., after which it shall be returned to the entering party.

(tt) The term "Total Good-till-Cancelled" or "GTX Order" shall mean, for orders so designated, that if after entry into the system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(uu) The term "Total Immediate or Cancel" or "IOX Order" shall mean for limit orders so designated, that if after entry into the system a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders are available for potential execution between 9:30 a.m. and 6:30 p.m.

#### **4705. Participant Registration**

(a) Participation in the system 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 an applicable agreement with the Association;

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which

system compared trades may be settled;

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

(4) maintenance of the physical security of the equipment located on the premises of the Order Entry Firm to prevent the improper use or access to the system, including unauthorized entry of information into the system; and

(5) acceptance and settlement of each trade that the system identifies as having been effected by such 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) Participation in the system as an ITS/CAES Market Maker shall be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.

(c) The registration required hereunder will apply solely to the qualification of a Participant to participate in the system. Such registration shall not be conditioned upon registration in any particular eligible or active securities.

(d) Each Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(e) NASD may impose upon any Participant such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as NASD may determine to be necessary to protect the integrity of NASD systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Participant or at NASD, or an

unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to affected Participants in writing.

(f) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the system or its use. Any losses, damages, or other claims, related to a failure of the system to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the system shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the system.

#### **4706. Order Entry Parameters**

##### **(a) Non-Directed Orders —**

(1) General. The following requirements shall apply to Non-Directed Orders entered by Participants:

(A) A Participant may enter into the system a Non-Directed Order in order to access the best bid/best offer as displayed in the system.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", "Day", "Good-till-Cancelled", "Fill or Return", "Discretionary", "Sweep", "Total Day", "Total Good till Cancelled", "Total Immediate or Cancel", or "Summary".

(i) If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or

portion thereof) shall be returned to the sender.

(ii) If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by the system and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(iii) If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by the system and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(iv) Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into the system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time.

(v) An order may be designated as "Fill or Return," in which

case it shall be executed solely against the Quotes/Orders of Participants at the best bid/best offer within the system. The system will, if necessary, execute against interest at successive price levels. A Fill or Return Order will not trade through the quotation of an ITS Exchange.

(vi) a. An order may be designated as "Discretionary", in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferred Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. Starting at 7:30 a.m., until the 4:00 p.m. market close, Discretionary Orders may be entered into the system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and

(a)(2)(B) and processed by the system at market open.

b. A Discretionary Order in an eligible security may not be preferenced to an ITS/CAES Market Maker or ITS Exchange, shall not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is also designated as a Sweep Order. Starting at 7:30 a.m., until the 4:00 p.m. market close, Discretionary Orders in ITS Securities may be entered into the system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the system at market open.

(vii) An order may be designated as a "Sweep Order." A Sweep Order may be entered only by an ITS/CAES Market Maker. A Sweep Order may trade through the quotations of ITS Exchanges, and it will be delivered to or executed only by Quoting Market Participants at multiple price levels.

(viii) An order may be designated as "Total Day" ("X") and may be entered between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m. If a priced X order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by the system and remain available for potential display/execution until it is cancelled by the entering party, or until 6:30 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(ix) An order may be designated as "Total Good-till-Cancelled" ("GTX"). A GTX order (or unexecuted portion thereof) shall be retained by the system and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m.

(x) An order may be designated as "Total Immediate or Cancel" ("IOX"). IOX orders may be entered beginning at 7:30 a.m. until 6:30 p.m. and are available for potential execution throughout the trading day beginning at 9:30 a.m. If a priced order designated as IOX and entered prior to 9:30 a.m. is not immediately executable at 9:30

a.m., the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as IOX and entered between 9:30 a.m. and 6:30 p.m. is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(xi) An order may be designated as "Summary," in which case the order shall be designated either as Day or GTC. A Summary Order that is marketable upon receipt by the system shall be rejected and returned to the entering party. If not marketable upon receipt by the system, it will be retained by the system.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate SEC Rule 10a-1.

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The system shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(F) A Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel, limit orders designated as Total Immediate or Cancel, and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed shall be held in a time-priority queue that will begin to be processed by the system at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing



queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by the system for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by Order Entry Firms — In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by Order Entry Firms:

(A) All Non-Directed orders entered by Order Entry Firms shall be designated as IOC, IOX, and Fill or Return and Discretionary order as described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the system of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. Limit and market orders designated as Immediate or Cancel or IOX will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC or in IOX, and that is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b) Reserved

(c) Entry of Agency and Principal Orders— Participants are permitted to enter into the system both agency and principal orders for delivery and execution processing.

(d) Order Size — Orders in eligible securities will be delivered to ITS Exchanges in round lots only.

(e) Open Quotes — The system will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

**4707. Entry and Display of Quotes/Orders**

(a) Entry of Quotes/Orders — Quoting Market Participants may enter Quotes/Orders into the system, and Order Entry Firms may enter Non-Attributable Orders into the system, subject to the following requirements and conditions:

(1) Quoting Market Participants shall be permitted to transmit to the system multiple Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable). Order Entry Firms shall be permitted to transmit to the system multiple Non-Attributable Orders at a single as well as multiple price levels and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the system shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase.

(3) An ITS/CAES Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Quoting Market Participants may continue to transmit to the system only their best bid and best offer Attributable Quotes/Orders. Nothing in these rules shall require a Quoting Market Participant to transmit to the system multiple Quotes/Orders.

(b) Odd lot share amounts of each individual ITS/CAES Market Maker shall be aggregated separately and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. An odd lot share amount will be cancelled if it represents an ITS/CAES Market Maker's best priced quote or order within the system. Odd lot share amounts will be cancelled at the end of the day.

(c) Reserve Size — Reserve Size shall not be displayed in the system, but shall be electronically accessible as described in Rule 4710(b).

#### **4708. ITS Commitments**

##### **(a) Compliance with Rule 5200 Series.**

(1) Pre Opening Application. ITS/CAES Market Makers may use the system to participate in the Pre Opening Application accordance with Rules 5240 and 5250. Order Entry Firms may not participate in the Pre Opening Application.

(2) Trade throughs. ITS/CAES Market Makers must use the system to comply with the trade through obligations set forth in Rules 5262 and 5264. The system will reject any order of an Order Entry Firm that, if executed, would trade through an ITS Exchange.

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use the system to comply with the locked and crossed markets obligations set forth in Rules

5263.

**(b) Inbound ITS Commitments**

(1) If the ITS Commitment contains an obvious error as described in Rule 5265(b), the system will decline it.

(2) If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a-1, the system will decline it.

(3) If the conditions described in subparagraphs (1) and (2) above do not apply, the system will execute or deliver an inbound ITS Commitment in accordance with applicable provisions of the Rule 5200 Series and the ITS Plan.

**4709. Reserved**

**4710. Participant Obligations in the System**

**(a) Registration**

Upon the effectiveness of registration as an ITS/CAES Market Maker or Order Entry Firm, the Participant may commence activity within the system for exposure to orders, entry of orders, or to report trades, as applicable. The operating hours of the system may be established as appropriate by the Association. The extent of participation in NASD by an Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into the system.

**(b) Non-Directed Orders**

(1) General Provisions — A Quoting Market Participant in an eligible security shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations — For each eligible security in which it is registered,

a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in the system. This obligation shall also apply to the Non-Attributable Quotes. Quoting Market Participants shall participate in the system as follows:

ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the system. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size. ITS/CAES Market Makers that elect order delivery shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's Displayed Quote/Order and Reserve Size. ITS/CAES Market Maker that elect order delivery shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ITS/CAES Market Maker's system, in which case the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

(B) Processing of Non-Directed Orders — Upon entry of a Non-Directed Order into the system, the system will ascertain who the next

Quoting Market Participant in queue to receive an order is and shall deliver an execution to Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the system shall be delivered to or automatically executed against Quoting Market Participants' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(1)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to the system shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i) and (ii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the quotation montage of the system, remain in system and available for execution.

(i) Execution Algorithm — Price/Time — The system will access interest in the system in the following priority and order:

- a. Displayed Quotes/Orders of ITS/CAES Market Makers in time priority between such participants' Quotes/Orders; and

b. Reserve Size of Quoting Market Participants in time priority between such participants' Quotes/Orders.

(ii) Exceptions — The following exceptions shall apply to the above execution parameters:

a. If a Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the system will first attempt to match off the order against the Quoting Market Participant's own Order if the participant is at the best bid/best offer in the system. Quoting Market Participants may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y — if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price

level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

I — if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the Quoting Market Participant that entered the AIQ "I" flagged order, based on the price/time execution algorithm.

b. If a Quoting Market Participant enters a Preferred Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferred Order shall be returned to the entering Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed), the Preferred Order shall be returned to the entering Participant.



c. If a Quoting Market Participant enters a Quote or Non-Directed Order that would result in the system either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting \$0.01. For example, in a stock with a current inside bid of \$10.00, the maximum price at which a single sell order could be executed would be \$8.99 calculated as follows:  $(\$10.00 - (\$10.00 \times .10 = \$1) - \$0.01 = \$8.99)$ . For offers, an execution or

delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done at a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding \$0.01. For example, in a stock with a current inside offer of \$10.00, the highest price at which a single sell order could be executed would be \$11.01 calculated as follows: ( $\$10.00 + (\$10.00 \times .10 = \$1) + \$0.01 = \$11.01$ ). This subsection shall not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.

d. If a Quoting Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of Quoting Market Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of Quoting Market Participants within the incoming Discretionary Order's discretionary price range (including displayed

Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by the system for potential display in conformity with Rule 4707(b).

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be

executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by Quoting Market Participants in the automatic execution functionality of the system, and will be delivered to Non-Directed Orders and Quotes/Orders entered by order delivery ITS/CAES Market Maker.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-

vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

e. A Fill or Return order in an eligible security will be executed solely by the system at the best bid/best offer, without delivering the order to an ITS Exchange. The system will, if necessary, execute against interest at successive price levels.

f. If a Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the system by 10% or more it will receive a warning message rejecting the order. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the system by 20% or more, the Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant. Non-Directed Orders Priced Under \$1.00: For Non-Directed Orders priced under \$1.00, such orders shall receive a rejection warning if they cross the best bid/offer in the system by \$0.10 or more. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a Participant enters a Non-Directed Order priced under \$1.00 that, at the time of

entry, would cross the best bid/offer in the system by \$0.20 or more, that Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant.

(C) Decrementation Procedures — The size of a Quote/Order displayed in the order display service and/or the quotation montage of the system will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution.

(i) If an ITS/CAES Market Maker declines or partially fills a Non-Directed Order without immediately transmitting to the system a revised Attributable Quote/Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond in any manner within 5 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

(ii) If the bid side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish a bid of \$0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish an offer of two times

the system best bid plus \$0.01 and offer for 100 shares.

(iii) If an ITS/CAES Market Maker regularly fails to meet a 5-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, NASD will place that ITS/CAES Market Maker's quote in a closed-quote state. NASD will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) All entries in the system shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time.

## **(2) Refresh Functionality**

Once a Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to the system processing, the system will refresh the displayed size out of Reserve Size to a size-level designated by the Quoting Market Participant. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the

displayed size-level designated by the Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares.

(3) Entry of Locking/Crossing Quotes/Orders — The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours — If during market hours, a participant enters into the system a Quote/Order that will lock/cross the market (as defined in NASD Rule 5263(a) or (b)), the system will not display the Quote/Order as a quote in the system; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered



into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system may, if consistent with the parameters of the Quote/Order, reformat the order and display it in the system as a Quote/Order on behalf of the entering Quoting Market Participant. If an order is not eligible to be reformatted and displayed, the system will reject the remainder of the order back to the entering participant. In ITS Securities, orders entered by Order Entry Firms are not eligible to be reformatted and displayed.

(B) Locked/Crossed Quotes/Orders in ITS Securities Immediately Before the Open — If the market in an ITS Security is locked or crossed at 9:30 a.m., Eastern Time, the system will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:55 a.m. and 9:29:59 Eastern Time, once the system has cleared a locked or crossed market, or if a newly submitted Quote/Order would create a locked or crossed market, the system will prevent a locked or crossed market from being created

by holding such Quotes/Orders in queue.

(i) Exception — The following exception shall apply to the above locked/crossed processing parameters:

If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in subparagraph (B) above, the system shall, before sending the order to any other ITS/CAES Market Maker, first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a).

(4) Notwithstanding the provisions of subparagraph (3) above:

(A) An ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 6350 prior to withdrawing from the system may reenter the system according to the conditions of its withdrawal; and

(B) An ITS/CAES Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in the trade reporting service of the ITS/CAES System for eligible securities, may reenter the ITS/CAES System after a clearing arrangement has been reestablished and the

market maker has complied with requirements for participation in the trade reporting service of the ITS/CAES System. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(5) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with the system inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from the system, a closed-quote status, and an excused withdrawal pursuant to Rule 6350. If withdrawal is granted, NASD Operations personnel will enter the withdrawal notification into the system from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

**(c) Reserved**

**(d) Order Entry Firms**

All entries in the system shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide and these rules. Orders may be entered in the system by the Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or

through the computer interface, as applicable, an execution report generated immediately following the execution.

**4711. Clearance and Settlement**

All transactions executed in, or reported through, the system shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

**4712. Obligation to Honor System Trades**

(a) If a Participant, or clearing member acting on its behalf, is reported by the system to clearing, or shown by the activity reports generated by the system as constituting a side of a system trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) Nasdaq shall have no liability if a Participant, or a clearing member acting on its behalf, fails to satisfy the obligations in paragraph (a).

**4713. Compliance with Rules and Registration Requirements**

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the system identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration as an ITS/CAES Market Maker, or Order Entry Firm or any other fitting penalty under the Rules of the Association.

(b) (1) If a Participant fails to maintain a clearing relationship as required under paragraph (a)(2) of Rule 4705, it shall be removed from the system until such time as a clearing arrangement is reestablished.

(2) A Participant that is not in compliance with its obligations under paragraph (a)(2) of Rule 4705 shall be notified when NASD exercises its authority

under paragraph (b)(1) of Rule 4713.

(3) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Associations rules, to enforce its rules or impose any fitting sanction.

**4714. Reserved**

**4715. Adjustment of Open Quotes and/or Orders**

The system will automatically adjust the price and/or size of open quotes and/or orders in all eligible securities (unless otherwise noted) resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent (\$0.01), as follows:

(a) Quotes — All bid and offer side quotes shall be purged from the system.

(b) Sell Orders — Sell side orders in NYSE-listed securities shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system. Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.

(c) Buy Orders — Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (i.e. cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) Odd lot orders in eligible securities that result from partial execution rather than order entry shall be canceled rather than adjusted.

(2) Cash Dividends: Buy side order prices shall be first reduced by the

dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".

(3) Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.

(4) Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

(5) Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.

(6) Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) Open buy and sell orders that are adjusted by the system pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

**4719. Anonymity**

**(a) Pre-Trade Anonymity**

(1) With the exception of those transactions described in paragraph (a)(2) below, the identity of the member submitting a Non-Attributable Quote/Orders seeking pre-trade anonymity will remain anonymous until execution, at which time the member's identity will be revealed to its contra party.

(2) A Non-Attributable Quote/Order seeking pre-trade anonymity will be processed on a fully anonymous basis in accordance with paragraph (b) below when it matches and executes against a Non-Attributable Quote/Order seeking full anonymity.

**(b) Full Anonymity**

(1) Transactions executed in the system in which at least one member submits a Non-Attributable Quote/Order seeking full anonymity will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.

(2) Reserved.

(3) The Association will reveal a member's identity in the following circumstances:

(A) when the National Securities Clearing Corporation ("NSCC")

ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades;

(B) for regulatory purposes or to comply with an order of an arbitrator or court; or

(C) on risk management reports provided to the member's contra parties each day after 4:00 p.m., which disclose trading activity on an aggregate dollar value basis.

(4) The Association will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote/Order has been decremented by another Quote/Order submitted by that same member.

(5) (A) In order to satisfy members' record keeping obligations under SEC Rules 17a-3(a)(1) and 17a-4(a), NASD shall, with the exception of those circumstances described in subparagraph (B) below, retain for the period specified in Rule 17a-4(a) the identity of each member that executes a fully anonymous transaction described in paragraph (b) of Rule 4719. The information shall be retained in its original form or a form approved under Rule 17a-6.

(B) In the situations described in paragraphs (b)(2) or (b)(4) of Rule 4719, and solely with respect to the member that submits, and receives an execution of, a fully anonymous Non-Attributable Quote/Order that is a Preferred Order, the member retains the obligation to comply with Rules 17a-3(a)(1) and 17a-4(a) because it possesses the identity of its contra party.



**4720. Reporting Through the Execution Services of the System**

Subject to the conditions set forth below, members may utilize the system to report trades in eligible securities required or eligible to be reported to Nasdaq pursuant to the Rule 6100 and 6400 Series.

(1) Members shall include the time of execution on reports submitted to the system; and

(2) For transactions between members, the members who are parties to the trade shall agree to all trade details prior to submitting the report to the system, and have in effect and on file with Nasdaq, an Automated Confirmation Transaction Service Service Bureau/Executing Broker Supplement to the Nasdaq Services Agreement ("Attachment 2 Agreement"), and a Nasdaq National Market Execution System Give-Up Addendum to the Nasdaq Services Agreement ("Nasdaq Give-Up Agreement").

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**4900. BRUT SYSTEM (System)**

**4901. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term "System securities" shall mean ITS Securities as that term is defined in NASD Rule 5210(c).

(b) The term "Effective Time" shall mean, for orders so designated, the time at which the order shall become eligible for display and potential execution with other orders in the System.

(c) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant.

(d) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(e) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price. A market order may have a limit price beyond which the order shall not be executed.

(f) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(g) The term "ITS/CAES System" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. pursuant to NASD Rule 4700 Series.

(h) The term "The BRUT ECN System," or "System," shall mean the automated system owned and operated by Brut, which is owned and operated by The Nasdaq Stock Market, Inc., which enables Participants to execute transactions in System securities; to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the System Participant(s) for clearance and settlement; and to provide System Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(i) The term "Participant" shall mean an NASD member that fulfills the obligations

contained in Rule 4902 regarding participation in the System. The term "Participant" shall also include non-NASD broker/dealers that desire to use the System for ITS Securities and otherwise meet all other requirements for System participation. Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

(j) The term "System Book Feed" shall mean a data feed for System eligible securities that Brut will make available to Participants and third-party vendors.

(k) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(l) The term "Reserve Size" shall mean the functionality that permits a Participant to display a portion of an order, with the remainder held in reserve on an undisplayed basis.

(m) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution only until 4:00 p.m. Eastern Time on the day they are submitted unless cancelled before then by the entering party.

(n) The term "Good-till-Cancelled-Overnight" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 4:00 p.m. Eastern Time, after which it shall be held by the System in a pending state, ineligible for display or execution, until the following trading day, when it will become eligible for display

and execution from 7:30 a.m. until 4:00 p.m. Eastern Time on that and all subsequent trading days, until a date provided by the entering party (or if no such date is given, indefinitely) until cancelled by the entering party.

(o) The term "Good-till-Time," shall mean, for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until the time designated by the entering party, after which the order will be cancelled by the system. This time may be relative time (e.g. 30 minutes after entry) or an actual time (e.g. 2:00 p.m.).

(p) The term "Day" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution only until 4:00 p.m. Eastern Time on the day they are submitted unless cancelled before then by the entering party.

(q) The term "End-of-Day" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until 8:00 p.m. Eastern Time, after which it shall be returned to the entering party.

(r) The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the the national best bid or offer, as appropriate. The Participant entering a Pegged Order can specify that order's price will either equal the inside quote or improve the inside quote by an amount set by the entering party on the same side of the market (a "Regular Pegged Order") or offset the inside quote on the contra side of the market

by an amount (the "Offset Amount") set by the Participant (e.g., \$0.01 less than the inside offer or \$0.02 more than the inside bid) (a "Reverse Pegged Order"). The Participant entering a Pegged Order may (but is not required to) specify a limit price, to define a price at which pegging of the order will stop and the order will be permanently converted into an un-pegged limit order at limit price. Offset amounts for Pegged Orders are priced in \$0.01 increments. However, if at any time an offset amount specified by a Participant does not result in an offer or a bid that is fully compliant with the minimum price variation provisions of Rule 4904, then, for an offer, the applicable offset amount will be the smallest amount that results in a compliant order and is greater than the specified offset amount, and, for a bid, the applicable offset amount will be the largest amount that results in a compliant order and is smaller, than the specified offset amount.

(s) The term "Discretionary" shall mean an order that when entered into System has both a displayed bid or offer price, as well as a non-displayed discretionary price range and size (which shall be equal to or less than the Order's Reserve Size) at which the Participant is also willing to buy or sell, if necessary.

(t) The term "Post Only" shall mean, for To Brut limit orders so designated, that if an order is marketable against an order then-displayed in the System upon receipt, it shall be rejected and returned to the entering Participant. If the order is marketable against a quote displayed outside of Brut, the price of the order is adjusted to a price \$0.01 inferior to the best bid (or offer, as appropriate) then displayed in the ITS/CAES System, and then displayed in the System.

(u) Reserved

(v) The term “Principal Inside Only” shall mean a principal order designated by the entering Participant as only eligible for execution at a price equal or better than the then-current national best bid/offer.

(w) The term “normal unit of trading” shall mean one hundred (100) shares.

**4902. System Participant Registration**

(a) Participation in Brut requires current registration with the System and is conditioned upon the Participant’s initial and continuing compliance with the following requirements:

(1) execution of a System Subscriber Agreement;

(2) satisfaction of the Brut New Accounts Policies & Procedures

requirements;

(3) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which System compared trades may be settled;

(4) acceptance and settlement of each System trade that System identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified System trade by the clearing member on the regularly scheduled settlement date;

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

(b) Access to the System by non-System participants is available through the

ITS/CAES System as described in the NASD Rule 4700 Series.

**4903. Order Entry Parameters**

**(a) To Brut Orders—**

(1) General. A To Brut Order is an order that is displayed in the System and is executable only against marketable contra-side orders in the System. The following requirements shall apply to To Brut Orders entered by Participants:

(A) A To Brut Order shall be a limit order, and shall indicate whether it is a buy, short sale, short-sale exempt, or long sale. A To Brut Order can be designated as End-of-Day, Immediate or Cancel, Good-till-Cancelled, Day, Good-till-Canceled Overnight, Good-till-Time, Effective Time, Post Only, Pegged or Discretionary.

(B) To Brut Orders shall be executed pursuant to the Brut Book Process as described in Rule 4905(a).

(C) A To Brut Order to sell short shall not be executed if the execution of such order would violate SEC Rule 10a-1. In said circumstances, the price of the To Brut Order shall be adjusted to \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

(D) The System shall not accept To Brut Orders that are All-or-None, or have a minimum size of execution.

**(b) Brut Cross Orders—**

(1) General. A Brut Cross Order is an order that is displayed in the System, and is executable against marketable contra-side orders in the System. The order also

is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. With the exception of Directed Cross Orders, once a Brut Cross Order is routed (in whole or in part) to another market center, any remaining unexecuted or returned portion of the order shall be posted in System and shall no longer be eligible for routing to other market centers. Directed Cross Orders directed to the New York Stock Exchange shall remain at the exchange until executed or cancelled by the entering party.

(A) A Brut Cross Order shall be a limit order, and shall indicate whether it is a buy, short sale, short-sale exempt, or long sale. A Brut Cross Order can be designated as Immediate or Cancel, End-of-Day, Good-till-Cancelled, Day, Good-till-Cancelled Overnight, Good-till-Time, Effective Time.

(B) A Brut Cross Order may also be designated as an Aggressive Cross Order. An Aggressive Cross Order is an order that is displayed in the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. If, after being posted in the Brut System, and after it has exhausted available liquidity in the Brut System, the Aggressive Cross Order has its price crossed by the displayed quote of another market center the System will be routed by



Brut to that market center for potential execution. Aggressive Cross Orders may comply with paragraph (A) of this rule

(C) A Brut Cross Order may also be designated as a Super Aggressive Cross Order. A Super Aggressive Cross Order is an order that is displayed in the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. If, after being posted in the Brut System, and after it has exhausted available liquidity in the Brut System, the Aggressive Cross Order has its price locked or crossed by the displayed quote of another market center the System will be routed by Brut to that market center for potential execution.

(D) A Brut Cross Order may also be designated as a Directed Cross Order. A Directed Cross Order is an order that is entered into the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. After being processed in the Brut System and exhausting available liquidity in the Brut System, the order is automatically routed by Brut to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed Cross Orders directed to the New York Stock Exchange if, after being

processed in the Brut System and exhausting available liquidity in the Brut System, such orders will be automatically routed to the ITS/CAES System and INET for potential execution and thereafter, if instructed by the entering party, to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders directed to the New York Stock Exchange shall remain at the New York Stock Exchange until executed or cancelled by the entering party.

(E) Brut Cross Orders, including those designated as Aggressive Cross Orders, Super Aggressive Cross Orders and Directed Cross Orders, shall be executed pursuant to:

(i) The Brut Book Order Process described in Rule 4905(a) to the extent marketable against an order resident in the System; and

(ii) With the exception of Directed Cross Orders, the Brut Order Routing Process described in Rule 4905(b) to the extent not marketable against an order resident in the System.

(F) A Brut Cross Order, including those designated as an Aggressive Cross Order, Super Aggressive Cross Order and Directed Cross Order, to sell short shall not be executed in the System if the execution of such order would violate SEC Rule 10a-1. In said circumstances, the price of the Brut Cross Order shall be adjusted to \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

**(c) Thru Brut Orders—**

(1) General. A Thru Brut Order is an order submitted to the System that is designated for routing to another market center. The following requirements shall apply to Thru Brut Orders:

(A) A Thru Brut Order shall be a market order or a limit order, and must indicate whether it is a buy, short sale, short-sale exempt, or long sale. A Thru Brut Order can be designated as Immediate or Cancel, End-of-Day, Good-till-Cancelled, Day, or Good-till-Time, or Effective Time.

(B) Thru Brut Orders do not participate in Brut Routing Process as described in Rule 4905(b). Instead such orders are sent directly to the market center selected by the entering party. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party.

**(d) Reserved**

**(e) Entry of Agency and Principal Orders**— Participants are permitted to submit agency, riskless principal, and principal orders for processing in the System. Participants shall correctly note their capacity at the time of entry of an order(s) into the System.

(1) No agency order shall be executed at a price inferior to the then current National Best Bid (for sell orders) or Best Offer (for buy orders), taking into account prior efforts to execute against the bids/offers of other market centers.

(2) Unless designated as “Principal Inside Only”, principal and riskless principal orders may be executed at a price inferior to the then current National Best Bid (for sell orders) or Best Offer (for buy orders).

**(f) Order Size**— Any order in whole shares up to 1,000,099 shares may be entered

into the System, subject to a dollar volume limitation of \$75,000,000.

**4904. Entry and Display of Orders**

(a) Entry of Orders — Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order shall indicate the amount of reserve size (if applicable).

(2) The System shall time-stamp an order upon receipt, which time-stamp shall determine the ranking of the order for purposes of processing To Brut Orders and Brut Cross Orders.

(3) Good-till-Cancelled, Day, orders can be entered into the System (or previously entered orders cancelled) between the hours 7:30 a.m. to 4:00 p.m. Eastern Time. Pegged, Discretionary, Immediate-or-Cancel and End-of-Day To Brut Orders, Good-till-Time, Good-till-Canceled Overnight and GTX orders can be entered into System (or previously entered orders cancelled) between the hours 7:30 a.m. to 8:00 p.m. Eastern Time. Orders entered prior to market open and Good-till-Time orders carried over from previous trading days, shall not become available for execution until 7:30 a.m. Eastern Time. Good-till-Time orders carried over from previous trading days with an Effective Time will not become available for execution until the Effective Time on all subsequent trading days the order is held by the System.

(b) Display of Orders — The System will display orders submitted to the System as follows:

(1) System Book Feed — orders resident in the System will be displayed to Participants via the System Book Feed.

(2) ITS/CAES System— For each System Security, the best priced order to buy and sell resident in the System shall be displayed and eligible for execution within the ITS/CAES System. The System may also provide to the ITS/CAES System additional orders, up to and including all orders in System, in System Securities.

(3) Minimum Price Variation — The minimum quotation increment for System Securities shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$ 1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected. A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of this paragraph) priced in an increment of less than \$0.01 will be adjusted by the System down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.

(4) Exceptions — The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding — The System Book Feed shall be capable of displaying trading interest in round lot and mixed-lot amounts, and sub-penny increments for quotations priced under \$1.00.

For ITS/CAES System display purposes, the System shall aggregate all shares, including odd-lot share amounts, entered by Participants at a single price level and round the total share amount down to the nearest round-lot amount. Any odd-lot portion of an order that is not displayed as a result of the rounding process shall remain available for execution, in accordance with the time-priority of their original entry time. Round-lots that are subsequently reduced by executions to a mixed lot amount shall also be rounded for to the nearest round-lot amount for purposes of display in the ITS/CAES System. Any odd-lot number of shares that do not get displayed as a result of rounding will remain available for execution, in accordance with the time-priority of their original entry time.

(B) Reserve Size — Reserve Size shall not be displayed in the System, but shall be accessible as described in Rule 4905.

(C) Discretionary Orders — The discretionary portion of Discretionary Orders shall be available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to Rule 4905.

## **4905. Order Processing**

### **(a) Brut Book Order Process**

Orders subject to the Brut Book Order Process shall be executed as follows:

(1) Default Execution Algorithm — Price/Time — The System shall execute interest within the System in price/time priority in the following order:

(A) Displayed Orders;

(B) Reserve Size; and

(C) Discretionary Orders within the Discretionary Order's discretionary price range.

(2) Decrementation — Upon execution, an order shall be reduced by an amount equal to the size of that execution. In the case of orders that have both a displayed and reserve share component, share amounts shall be reduced starting first with their reserve portions.

(3) Processing of Locking/Crossing Orders: If during market hours, a Participant enters a To Brut order that will lock/cross the market (as defined in NASD Rule 5263(a) or (b)), the System shall adjust the price of the order to \$.01 less than the current best bid quotation (for buy orders) or \$.01 more than the current best offer quotation (for sell orders) and thereafter be processed as a Reverse Pegged Order.

(4) Processing of Directed, Aggressive and Super Aggressive Cross Orders — The System shall process crossed Directed and Aggressive Cross Orders, and locked or crossed Super Aggressive Cross Orders as follows:

(A) Displayed orders which are designated as "Directed Cross Orders" by a Participant shall be routed as described in Rule 4903(b)(1)(D).

(B) Displayed orders which are designated as "Aggressive Cross

Orders" by a Participant that are subsequently crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so crossed.

(C) Displayed orders which are designated as "Super Aggressive Cross Orders" by a Participant that are subsequently locked or crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so locked or crossed.

**(b) Brut Order Routing Process**

(1) The Brut Order Routing Process shall be available to Participants from 7:30 a.m. to 6:30 p.m. Eastern Time, and shall route orders in accordance with parameters described in Rule 4903 for a particular order type.

(2) With the exception of Thru Brut and Directed Cross Orders that specifically direct which market center an order is to be routed, orders routed out of the Brut System to other market centers for potential execution are generally delivered to other market centers in price/size priority. If the routed order is smaller in size than the total combined displayed share amounts of accessible market centers at the best price level, the Brut System delivers the routed order to the available market centers in price/size priority. If the routed order is larger than the total combined displayed share amounts of accessible market centers at the best price level, the Brut System delivers over-sized orders to each displayed market center's quote in proportion to the individual market's center share of that total displayed share amount.



(3) In the event an order routed to another market center is not executed in its entirety, the remaining portion of the order shall be returned to the System and, if upon return the order is marketable against a System order then priced at the NBBO, it will be subjected to Brut Book Process prior to any further routing.

(4) An order that has been routed to another market shall have no time standing in the System execution queue relative to other orders in the System. A request from a Participant to cancel an order while it is outside the System shall be processed subject to the applicable rules of the market center to which the order has been routed.

#### **4906. Clearance and Settlement**

All transactions executed in, or reported through, System shall be cleared and settled by and between the System Participant and Brut, through a registered clearing agency using a continuous net settlement system.

#### **4907. Obligation to Honor System Trades**

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, as constituting a side of a System trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) Brut and its affiliates shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

#### **4908. Compliance with Rules and Registration Requirements**

(a) Failure by a Participant to comply with any of the rules or registration

requirements applicable to the System identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration a Participant or any other fitting penalty under the Rules of the Association.

(b) If a Participant fails to maintain a clearing relationship to honor its obligations under Rule 4906, it shall have its access to the System restricted until such time as a clearing arrangement is reestablished.

(c) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Associations Rules, to enforce its rules or impose any fitting sanction.

#### **4909. Adjustment of Open Orders**

Except when a cash dividend or distribution is less than one cent (\$0.01), on the ex-date of a corporate action, the System shall automatically adjust the price and/or size of Good-till-Cancelled Overnight orders resident in the System in response to issuer corporate actions related to a cash dividend as follows:

(a) Sell Orders — Sell orders shall not be adjusted by the System and must be modified, if desired, by the entering party,

(b) Buy Orders — Buy orders shall be reduced by the dividend amount. To the extent that the dividend includes a sub-penny increment, the order will displayed and processed as set forth in Rule 4904(b)(3)(B). Open buy and sell orders that are adjusted by the System pursuant to the above rules, and that thereafter continuously remain in the System, shall retain the time priority of their original entry.

#### **4910. Anonymity**

(a) Transactions executed in the System shall be cleared and settled with Brut. The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities other than Brut.

(b) Brut shall reveal a member's identity in the following circumstances:

(1) when the National Securities Clearing Corporation ("NSCC") ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court.

#### **4911. Clearly Erroneous Transactions**

All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to NASD Rule 11890.

#### **4912. Normal Business Hours**

The Brut System operates from 7:30 a.m. to 8:00 p.m. Eastern Time on each business day.

#### **4913. Limitation of Liability**

The Association and its subsidiaries, as well as Nasdaq and Brut and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member

sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System.

**4914. Confidentiality Between Introducing Broker Function and Brut System**

(a) Nasdaq shall establish internal controls and procedures that, on an ongoing basis, adequately restrict proprietary and confidential information flows between Nasdaq and its facilities (including the Brut System) and Brut's functions as an introducing broker.

(b) Nothing in paragraph (a) above shall restrict the provision of information to Brut in manner similar to that provided by Nasdaq and/or Brut System to other market participants in the ordinary course of business.

**4950. INET SYSTEM**

**4951. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The terms "The INET ECN System," "INET System," or "System," shall mean the automated system owned and operated by Brut, which is owned and operated by The Nasdaq Stock Market, Inc., which enables Participants to execute transactions in System securities, to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System for dissemination to the public and the industry, to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the System Participant(s) for clearance and settlement, and to provide System Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(b) The term "System Securities" shall mean ITS Securities as that term is defined in

NASD Rule 5210(c).

(c) The term "Participant" shall mean an entity that fulfills the obligations contained in NASD Rule 4952 regarding participation in the System.

(d) The term "ITS/CAES System" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. pursuant to NASD Rule 4700 Series.

(e) The term "System Book Feed" shall mean a data feed for System eligible securities.

(f) The term "normal unit of trading" shall mean one hundred (100) shares.

(g) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(h) The term "odd-lot" shall mean an order that is for less than a normal unit of trading.

(i) The term "Immediate or Cancel" or "IOC" shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant.

(j) The term "Market Day" or "Limit Day" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display/execution until 4:00 p.m. Eastern Time on the day it was submitted unless cancelled before then by the entering party.

(k) The term "Extended Day" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof)

shall remain available for potential display and/or execution until 8:00 p.m. Eastern Time.

(l) The term “Expire Time” shall mean, for orders so designated, the time until which the System will hold the order for potential execution.

(m) The term “Limit Order” shall mean an order to buy or sell a stock at a specified price or better.

(n) The term “Market Order” shall mean an un-priced order to buy or sell a stock at the market's current best price. A Market Order may have a limit price beyond which the order shall not be executed.

(o) The term “Discretionary Order” shall mean an order that has both a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is converted to an IOC order equal in size to the displayed size and priced at the most aggressive price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is accompanied by the cancellation of the displayed portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, its original displayed price, and its non-displayed discretionary price range.

(p) The term “Reserve Order” shall mean a limit order that has both a round-lot

displayed size as well an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than 100 shares, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

(q) The term “Pegged Order” shall mean, for orders so designated, an order that, after entry, has its price automatically adjusted by the System in response to changes in the national best bid or offer (“NBBO”), as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the NBBO (“Primary Peg”) or the opposite side of the NBBO (“Market Peg”). In addition, Pegged Orders may also establish their pricing relative to the NBBO by the selection of one or more \$0.01 offset amounts that will adjust the price of the order by the offset amount selected. A new timestamp is created for the order each time it is automatically adjusted.

(r) The term “Displayed Order” shall mean, for limit orders so designated, an order that is displayed in the System, in whole or in part, and is available for potential execution against all incoming orders until executed in full or cancelled.

(s) The term “Non-Displayed Order” shall mean, for limit orders so designated, an order that is not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

(t) The term “Minimum Quantity Order” shall mean, for orders so designated, an

order that requires that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of Immediate or Cancel.

**4952. System Participant Registration**

(a) Participation in INET requires current registration with the System and is conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) execution of a System Subscriber Agreement;

(2) satisfaction of INET new account policy and procedure requirements;

(3) membership in, or an access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which System compared trades may be settled;

(4) acceptance and settlement of each System trade that the System identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified System trade by the clearing member on the regularly scheduled settlement date;

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

(6) In addition to the above, all System Participants shall be members of the Association. Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes



operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

#### **4953. Order Entry Parameters**

##### **(a) INET System Orders**

(1) General - An INET System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System as set forth in NASD Rule 4955.

(A) All INET System Orders shall indicate whether they are a Market Order or Limit Order and shall indicate if they are a buy, short sale, short-sale exempt, or long sale. INET Systems Orders can be designated as Immediate or Cancel (“IOC”), Market Day or Limit Day (“DAY”), Extended Day (“XDAY”), or Expire Time (“ExT”).

(B) An INET System order may also be designated as a Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, or a Discretionary Order.

(2) Short Sale Compliance- INET System orders to sell short shall not be executed if the execution of such an order would violate Regulation SHO or Rule 10a-1 under the Exchange Act or, for routed orders, the rules of the applicable self-regulatory organization governing short selling. If an order to sell short is entered that, if executed upon entry, would violate Exchange Act Rule 10a-1, the System will re-price the order to the next whole minimum price variation above the "last sale" on the consolidated tape and enter the order on the book. The System will thereafter

monitor the order such that if the order becomes marketable but executing the order would result in a violation of Exchange Act Rule 10a-1, the System will cancel the order off of the book.

(3) Routing – All INET System orders entered by participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in NASD Rule 4956.

(4) Any order in whole shares up to 999,999 shares may be entered into the System for normal execution processing.

#### **4954. Entry and Display of Orders**

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order shall indicate the amount of reserve size (if applicable).

(2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.

(3) Orders can be entered into the System (or previously entered orders cancelled) between the hours 7:00 a.m. to 8:00 p.m. Eastern Time.

(A) Exception: Orders entered prior to 9:30 a.m. Eastern Time, or after 4:00 p.m. Eastern Time, seeking to be routed to either the New York or American Stock Exchanges shall be rejected.

(B) Exception: Pegged and Market Orders may only be entered

between 9:30 a.m. and 4:00 p.m. Eastern Time.

**(b) Display of Orders**—The System will display orders submitted to the System as follows:

(1) System Book Feed—orders resident in the System will be displayed via the System Book Feed.

(2) Best Priced Order Display—For each System Security, the best priced order to buy and sell resident in the System will be displayed via the National Stock Exchange. The System's display of its orders in the National Stock Exchange shall not continue beyond September 30, 2006.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding—The System Book Feed shall be capable of displaying trading interest in odd-lot, round lot and mixed-lot amounts and, for orders price under \$1.00, in sub-penny increments

(B) Minimum Increments—The minimum trading increments for the System shall be set forth in NASD Rule 4962.

(C) Reserve Size—Reserve Size shall not be displayed in the System, but shall be accessible as described in NASD Rule 4955.

(D) Discretionary Orders—The discretionary portion of Discretionary Orders shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to NASD Rule 4955 and NASD Rule 4951(o).

(E) Non-Displayed Orders—Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to NASD Rule 4955.

(F) Trade-Through Compliance and Locked or Crossed Markets—If, at the time of entry, a Displayed Order in an exchange-listed security that the entering party has elected not to make eligible for routing would lock the market, it will be converted by the System into a Non-Displayed Order. If, at the time of entry, a similar Displayed Order would cross the market or would cause a trade-through violation, the order will be converted by the System to a Non-Displayed Order and re-priced to the current low offer (for bids) or to the current best bid (for offers). Such Non-Displayed Orders will be cancelled by the System if the market moves through the price of the order after the order is accepted.

#### **4955. Order Processing**

##### **(a) INET Book Order Process**

INET System orders shall be executed through the INET Book Order Process as set forth below:

(1) Default Execution Algorithm - Price/Time -- The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:

(A) Displayed Orders;

(B) Non-Displayed Orders, the reserve portion of Reserve Orders, in price/time priority among such interest;

(C) The discretionary portion of Discretionary Orders as set forth in NASD Rule 4951(o).

(2) Decrementation – Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(3) Price Improvement – any potential price improvement resulting from an execution in the System shall accrue to the taker of liquidity.

Example:

Buy order resides on INET book at 10.

Incoming order to sell priced at 9 comes into INET System

Order executes at 10 (seller get \$1 price improvement)

## **4956. Routing**

### **(a) INET Order Routing Process**

(1) The INET Order Routing Process shall be available to Participants from 7:00 a.m. to 8:00 p.m. Eastern Time, and shall route orders as described below:

#### (A) Routing Options

The System provides eight routing options for orders. Of these eight, five – DOT Immediate, DOT Alternative, DOT Alternative 2, Reactive Only DOT and DOT Nasdaq- are available for orders ultimately sought to be directed to either the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”). The System also allows firms to send individual

orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The eight System routing options are:

(i) DOT Immediate (“DOTI”)—under this option, after checking the INET System for available shares, orders are sent directly to the NYSE or the AMEX as appropriate. When checking the INET book, the System will seek to execute at the better price of either the limit price specified in the order, or the best price displayed at that time at the NYSE. If no liquidity is available in the INET System, the order will be routed directly to the NYSE or AMEX at the limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this option.

(ii) DOT Alternative (“DOTA”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution before the destination exchange. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order’s original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this strategy.

(iii) DOT Alternative 2 (“DOTA2”)— under this option, orders first check the INET book and then other market centers for

potential execution. Any portion of the order that remains unexecuted is posted on the INET book until the expiration of the Nasdaq-specified time period at either the order's limit price or, if the limit price would lock or cross the market, at the highest bid or lowest offer that would not lock the market. At the expiration of the period specified by Nasdaq (**which will not exceed 30 seconds**), any remaining unexecuted portion of the order is sent to the NYSE or AMEX, as appropriate (the destination exchange). DOTA2 orders entered prior to the destination exchange's opening time will be displayed on the INET book until immediately prior to the opening time and then sent to the destination exchange. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

(iv) Reactive Only DOT ("DOTR")— under this option, orders first check the INET book and then other market centers and the destination exchanges (the NYSE or the AMEX, as appropriate) for potential execution. Any portion of the order that remains unexecuted is posted on the INET book (unless they were sent to the destination exchange). Subsequently, if an order that was posted on the INET book became locked or crossed by another accessible market center or destination exchange, the System will route the order to the locking or crossing market center or destination exchange. Whenever an order is

sent to the destination exchange, it is sent at its original price for potential display and/or execution. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.

(v) Reactive Electronic Only (“STGY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(vi) Electronic Only Scan (“SCAN”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares



remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(vii) Aggressive Electronic Only (“SPDY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. Market orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a de minimis exception to the trade-through rule set forth

in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.

(viii) DOT Nasdaq ("DOTN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the ITS/CAES System and/or Nasdaq's Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.

(B) Priority of Routed Orders

Regardless of the routing option selected, orders sent by the INET System to other markets do not retain time priority with respect to other orders in INET's System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, short-sale regulation and order cancellation. If a routed order is subsequently

returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

**4957. Clearance and Settlement**

All transactions executed in the System shall be cleared and settled by and between the System Participant and INET, through a registered clearing agency using a continuous net settlement system.

**4958. Obligation to Honor System Trades**

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, as constituting a side of a System trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) INET and its affiliates shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

**4959. Compliance with Rules and Registration Requirements**

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to it and its use of the System shall subject such Participant to censure, fine, suspension or revocation of its registration as Participant or any other fitting penalty under the Rules of the Association, or such other action, up to and including termination of access to the System.

(b) If a Participant fails to maintain a clearing relationship, or to honor its obligations under NASD Rule 4958, it shall have its access to the System restricted until such time as a clearing arrangement is reestablished and/or the Participant meets its obligation to honor

System trades.

(c) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Association's Rules, to enforce its rules or impose any fitting sanction.

**4960. Anonymity**

(a) Transactions executed in the System shall be cleared and settled with INET. The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities other than INET.

(b) INET shall reveal a Participant's identity in the following circumstances:

(1) when the National Securities Clearing Corporation ("NSCC") ceases to act for a participant, or the Participant's clearing firm, and NSCC determines not to guarantee the settlement of the Participant's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court;

(3) no later than the end of the day on the date a trade was executed, when the participant's order has been decremented by another order submitted by that same Participant; or

(4) if both Participants to the transaction consent.

**4961. Clearly Erroneous Transactions**

All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to NASD Rule 11890.

**4962. Minimum Quotation Increment**

The minimum quotation increment in the INET System for quotations of \$1.00 or above shall be \$0.01. The minimum quotation increment in the INET System for quotations below \$1.00 shall be \$0.0001. However, if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of this paragraph) priced in an increment of less than \$0.01 will be adjusted by the INET System down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.

**4963. Normal Business Hours**

The INET System operates from 7:00 a.m. to 8:00 p.m. Eastern Time on each business day.

**4964. Limitation of Liability**

The Association and its subsidiaries, as well as Nasdaq and INET and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member

sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System.

\* \* \* \* \*

**4000A. NASD ALTERNATIVE DISPLAY FACILITY**

\* \* \* \* \*

**4100A. GENERAL**

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

\* \* \* \* \*

**4120A. Trading Halts**

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

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

(1) No Change.

(2) shall halt trading otherwise than on an exchange in the Alternative

Display Facility in an ADF-eligible security when:

(A) through (B) No Change.

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

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

(3) shall close NASD Alternative Display Facility to quotation and trade reporting 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 (3), members would not be prohibited from trading [through]on other markets for which trading is not halted.

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

(b) No Change.

**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 (3) No Change.

(4) "Nasdaq" means the NASDAQ Stock Market, LLC[,] and its facilities.

(5) through (6) No Change.

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

(10) through (16) No Change.

(b) No Change.

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

(a) through (c) No Change.

**(d) Definitions**

(1) No Change.



(2) "Direct electronic access" means the ability to deliver an order for execution directly against an individual 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 an 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 ADF Market Participant that are not affiliates of an 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. An 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) through (5) No Change.

(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 ADF Market Participant, as defined in Rule

[4300A(d)(4)]4200A, that alleges a denial or limitation of access in contravention of Rule 4300A.

(2) through (3) No Change.

(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) through (b) No Change.

[(c) A Registered Reporting ADF Market 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.]

[(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.]

\* \* \* \* \*

**4623A. Alternative Trading Systems**

(a) No Change.

**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 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]ADF-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) through (2) No Change.

No Registered Reporting[ 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 ADF-Eligible Securities**

This Rule 4630A Series governs the reporting by members of transactions in ADF-eligible securities through NASD's Trade Reporting and Comparison Service ("TRACS"). [Participation in the trade reporting function of TRACS is mandatory for all members 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**

- (1) No Change.
- (2) Transaction Reporting to TRACS Outside Normal Market Hours
  - (A) No Change.
  - (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.] 9:30 a.m. Eastern Time on trade date[, ] and be designated as “.T” trades to denote their execution outside normal market hours.

(ii) No Change.

(3) through (10) No Change.

**(b) Which Party Reports Transaction**

(1) No Change.

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

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

(4) No Change.

**(c) Information To Be Reported - Two Party Trade Reports**

(1) No Change.

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

(A) through (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 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));

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

(J) through (T) No Change.

(3) No Change.

**(d) 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 in military format, unless another provision of NASD rules requires that a different time must be included on the report;

(E) through (G) No Change.

(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 (4) No Change.

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

(6) No Change.

**[(I) Dissemination of Transaction Reports in Convertible Debt Securities]**

[For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through NASD's Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less.]

**(I) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

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

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (m)(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 (m)(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 (m)(1) shall report the cancellation on the following business day by 6:30 p.m.

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

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

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



p.m., or (ii) by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.

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

#### **5000. 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. Short Sale Rule**

(a) through (b) No Change.

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

(1) Sales by a registered market maker registered in the security 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]~~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]~~that is marked "long."

(4) through (9) No Change.

(d) through (k) No Change.

(l) This section shall be in effect until December 15, 2006.

\* \* \* \* \*

#### **IM-5100. Short Sale Rule**

(a) (1) through (2) No Change..

(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The Association does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to

effectuate such strategies will be viewed by the Association as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule [3350]5100.

(b) No Change.

(c) (1) Rule [3350]5100 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule [3350]5100.

(2) No Change.

(3) The Association believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, the Association will consider any such activity as a violation of Rule [3350]5100.

**[5200] 5110. 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 exchange via the Consolidated Tape.

**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 Nasdaq 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;

(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; and

(i) 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:

<u>Security</u>	<u>Consolidated Closing Price</u>	<u>Applicable Price Change (More Than)</u>
<u>Network A</u>	<u>Under \$15</u>	<u>1/8 point</u>
	<u>\$15 or over</u>	<u>1/4 point<sup>1</sup></u>

<u>Network B</u>	<u>\$5 or over</u>	<u>1/8 point</u>
	<u>Under \$5</u>	<u>1/4 point<sup>2</sup></u>

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<sup>1</sup> 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.

<sup>2</sup> 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:

<u>Security</u>	<u>Consolidated Closing Price</u>	<u>Applicable Price Change (More Than)</u>
<u>Network A</u>	<u>Under \$15</u>	<u>\$0.10</u>
	<u>\$15 or over</u>	<u>\$0.25<sup>3</sup></u>

<u>Network B</u>	<u>Under \$5</u>	<u>\$0.10</u>
	<u>\$5 or over</u>	<u>\$0.25<sup>4</sup></u>

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<sup>3</sup> 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.

<sup>4</sup> 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:

<u>Security</u>	<u>Consolidated Closing Price</u>	<u>Applicable Price Range</u>
<u>Network A</u>	<u>Under \$50</u>	<u>1/2 point</u>
	<u>\$50 or over</u>	<u>1 point<sup>5</sup></u>
<u>Network B</u>	<u>Under \$10</u>	<u>1/2 point</u>
	<u>\$10 or over</u>	<u>1 point<sup>6</sup></u>

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<sup>5</sup> 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.

<sup>6</sup> 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:

<u>Security</u>	<u>Consolidated Closing Price</u>	<u>Applicable Price Range</u>
<u>Network A</u>	<u>Under \$50</u>	<u>\$0.50</u>
	<u>\$50 or over</u>	<u>\$1.00<sup>7</sup></u>
<u>Network B</u>	<u>Under \$10</u>	<u>\$0.50</u>
	<u>\$10 or over</u>	<u>\$1.00<sup>8</sup></u>

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<sup>7</sup> 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.

<sup>8</sup> 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 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 pilot period ending November 30, 2006, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided

Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

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

**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.

**5300. Reserved**

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**6000. NASD SYSTEMS AND PROGRAMS**

**6100. CLEARING AND COMPARISON RULES**

**6110. Definitions**

(a) through (d) No Change.

(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 Rule[s] 6120(a)([5]4) [and (a)(6)] below and their qualifying members.

(f) No Change.

(g) The term “Reportable Security” shall mean all designated securities as defined in Rule 4200, all eligible securities as defined in Rule 6410, [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) through (l) No Change.

(m) The term “System” shall mean the Trade Reporting Facility for purposes of trades in [Nasdaq-listed] designated securities as defined in Rule 4200, the trade reporting service of the ITS/CAES System for purposes of eligible securities as defined in Rule 6410,

and the OTC Reporting Facility for purposes of OTC [e]Equity [s]Securities as defined in Rule 6600 and Direct Participation Programs as defined in Rule 6910.

(n) No Change.

## **6120. Trade Reporting Participation Requirements**

### **(a) Mandatory Participation for Clearing Agency Members**

(1) through (3) No Change.

(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) through (ii) No Change.

(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) through (v) No Change.

(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. No Change.

(C) through (D) No Change.

[(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)](5) 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] a Participant application agreement, as applicable, 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] by NASD. 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) No Change.

**(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 [(4)](3).

(B) No Change.

**6130. Trade Report Input**

(a) through (c) No Change

**(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

(1) through (3) No Change.

(4) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD's rules requires that a different time be included on the report;

(5) through (13) No Change.

(e) No Change.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with Rule 11890,

[M]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) No Change.

**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]Capital Market, 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).

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**6300. [Reserved] Consolidated Quotations Service (CQS)**

**6310. Reserved**

**6320. Registration as a CQS Market Maker**

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

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



effective upon receipt by the member of notice of approval of registration by the Association.

(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request via a Nasdaq terminal.

Registration shall become effective at the time the registration request is entered.

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

(e) All CQS market makers registered in reported securities shall be registered as market makers in the Computer Assisted Execution System (CAES); all CQS market makers registered in reported securities that are eligible for inclusion in the Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) shall be registered as market makers in ITS/CAES and shall be subject to the Rule 5200 Series.

### **6330. Obligations of CQS Market Makers**

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

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

(c) A CQS market maker shall be obligated to have available in close proximity to

the Nasdaq terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.

**(d) Minimum Price Variation**

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

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

**6340. Normal Business Hours**

A CQS market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. A CQS market maker shall designate a closing time for each security between 4:00 p.m. and 6:30 p.m. Eastern Time. A designated

closing time may only be on the hour or half hour. A CQS market maker whose market is closed may re-open its market as late as 6:30 p.m. Eastern Time upon appropriate notification to the Association.

**6350. Withdrawal of Quotations**

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

(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 6431.

**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. [Reserved] Reporting Transactions in Listed Securities**

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

**6410. Definitions**

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

(b) Reserved.

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

(d) "Eligible securities" means all common stocks, preferred stocks, long-term

warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450.

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

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

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

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

(i) "Stop Stock Price" means the specified price at which a member and another party

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

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

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

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

#### **6420. Transaction Reporting**

##### **(a) When and How Transactions are Reported**

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

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

within 90 seconds after execution must be designated as .T trades.

Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis

the following day between 8:00 a.m. and 6:30 p.m. Eastern Time.

(2) (A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to Nasdaq, or by telephone to the Nasdaq Operations Department if the reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late.

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

Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis the following day between 8:00 a.m. and 6:30 p.m.

(3) (A) All members shall report transactions in eligible securities

executed outside the hours of 9:30 a.m. and 6:30 p.m. Eastern Time as follows:

(i) Last sale reports of transactions in eligible securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds shall also be designated as .T trades. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 p.m. as .T trades.

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

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

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

(B) All members shall report as soon as practicable to the Market



Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to Nasdaq 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 Nasdaq, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

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

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

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

(7) Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to Nasdaq 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.<sup>1</sup>

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<sup>1</sup> Implementation of the .PRP modifier for listed securities is delayed until June 6, 2005.

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

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

**(b) Which Party Reports Transaction**

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

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

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

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

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

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) Stock symbol of the eligible security;

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

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

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

(5) The time of execution expressed in hours, minutes, and seconds based on

Eastern Time, unless another provision of the Association's rules requires that a different time must be included on the report.

**(d) Procedures for Reporting Price and Volume**

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

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

**Example:**

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

REPORT 100 shares at 40.

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

**Example:**

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

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

REPORT 100 shares at 40.

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

**Example:**

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

REPORT 100 shares at 40.

**Example:**

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

REPORT 100 shares at 39 7/8.

**Example:**

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

REPORT 100 shares at 39.85.

**Example:**

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

REPORT 100 shares at 40.

**Example:**

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

REPORT 100 shares at 40.

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

(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 Nasdaq 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 Nasdaq the cancellation of any trade previously submitted to Nasdaq. 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 Nasdaq, 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.

**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)**

<u>Member</u>	<u>Transaction</u>	<u>Member Reports When Contra-Party Is</u>			
		<u>Registered Reporting Member</u>	<u>Non-Registered Reporting Member</u>	<u>Exchange</u>	<u>Customer</u>
<u>Registered Reporting Member</u>	<u>buys from:</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
	<u>sells to:</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
<u>Non-Registered</u>	<u>buys from:</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>Yes</u>

<u>Reporting Member</u>	<u>sells to:</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
<u>ACT ECN</u>	<u>See 6130(c)</u>	<u>See 6130(c)</u>	<u>No</u>	<u>See 6130(c)</u>	-

**Chart II — Reporting Requirements for "Riskless" Transactions as Defined in Rule**

**6420(d)(4)**

<u>Member</u>	<u>Transaction</u>	<u>Member Reports When Contra-Party Is</u>			
		<u>Registered Reporting Member</u>	<u>Non-Registered Reporting Member</u>	<u>Exchange</u>	<u>Customer</u>
<u>Registered Reporting Member</u>	<u>buys from customer and sells to:</u>	<u>Yes</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
	<u>sells to customer and buys from:</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>

<u>Non-Registered Reporting Member</u>	<u>buys from customer and sells to:</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>
	<u>sells to customer and buys from:</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>Yes</u>

**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 6431.

**6431. Trading Halts**

**(a) Authority to Initiate Halts In Trading of Eligible Securities**

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

(1) shall halt trading otherwise than on an exchange in an eligible 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 otherwise than on an exchange in an 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 the ITS/CAES System to quotation and trade reporting activity whenever the ITS/CAES System is unable to transmit real-time quotation and trade reporting information to the applicable Securities Information Processor. If the ITS/CAES System closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a designated 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 6431(a) to initiate a trading halt or close the ITS/CAES System, 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.

**6440. Trading Practices**

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

inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

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

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

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

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

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

(d) No member shall participate or have any interest, directly or indirectly, in the

profits of a manipulative operation or knowingly manage or finance a manipulative operation.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**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.

<b><u>SYMBOL</u></b>	<b><u>SECURITY</u></b>
<u>ALK\$</u>	<u>Alaska Airlines \$2.77 Pfd.</u>
<u>ADN</u>	<u>Alden Electronic</u>

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

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

**6500. OTC Bulletin Board<sup>®</sup> Service**

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**6530. OTCBB-Eligible Securities**

A member shall be permitted to quote the following categories of securities in the

Service:

(a) through (b) No Change.

(c) any equity security that meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE), The NASDAQ Stock Market LLC (Nasdaq), or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE, Nasdaq, or AMEX preceding the actual delisting; and

(3) No Change.

(d) and (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 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]6640 sets forth the procedure for demonstrating compliance with SEC Rule 15c2-11.

(b) through (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 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.<sup>1</sup>

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<sup>1</sup> No Change to Footnote Text.

**(1) Permissible Quotation Entries**

(A) No Change.

(B) A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Rule [6750]6650. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.

(C) No Change.

(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 Operations Department 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) through (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, 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 Depository 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 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) the OTCBB security or the security underlying the OTCBB ADR is a derivative or component of a security listed on or registered with a national securities exchange[, The Nasdaq Stock Market,] or foreign securities exchange or market

(“listed security”), and the national securities exchange, [The Nasdaq Stock Market,] or foreign securities exchange or market[,] imposes a trading halt in the listed security[.]; or

(3) No Change.

(b) and (c) No Change.

\* \* \* \* \*

## **6600. OVER-THE-COUNTER EQUITY SECURITIES**

\* \* \* \* \*

### **6620. Transaction Reporting**

#### **(a) When and How Transactions are Reported**

(1) through (2) No Change.

#### **(3) Transaction Reporting Outside Normal Market Hours**

(A) and (B) No Change.

(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) No Change.

(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 on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time and be designated [“as/of”]“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) No Change.

(4) through (9) No Change.

(b) through (e) No Change.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with Rule 11890, m[M]embers shall report to the OTC Reporting Facility the cancellation of any trade previously submitted to the OTC Reporting Facility. 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).

**(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 the OTC Reporting Facility 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.

\* \* \* \* \*

**6650. Minimum Quotation Size Requirements For OTC Equity Securities**

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.

<b>Price (Bid or Offer)</b>	<b>Minimum Quote Size</b>
0 - .50[*] <sup>1</sup>	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

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[<sup>\*</sup>]¹ No change to Footnote Text.

\* \* \* \* \*

**6700. Transaction Reporting in PORTAL<sup>®</sup> Securities**

**6710. Definitions**

For purposes of the [PORTAL<sup>®</sup> Rules] Rule 6700 Series, unless the context requires otherwise:

(a) through (e) No Change.

(f) “PORTAL security” means a security that is currently designated by [the Association ] The Nasdaq Stock Market LLC for inclusion in the PORTAL Market[ pursuant to the Rule 5320 Series].

(g) through (n) No Change.

\* \* \* \* \*

**6730. Requirements Applicable to NASD Members**

\* \* \* \* \*

**6732. Reporting Debt and Equity Transactions in PORTAL Securities**

(a) Transactions in a PORTAL equity security shall be reported to the OTC Reporting Facility in accordance with this Rule. Each PORTAL transaction report on a PORTAL equity security shall:

(1) include the information required by paragraph (d) of Rule [6130] 6620(c), including the time of execution;

(2) No Change.

(3) be submitted by the party as required by [paragraph (c) of ]Rule [6130]6620(b).

(b) through (d) No Change.

\* \* \* \* \*

**[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.]

\* \* \* \* \*

**6750. NASD Rules [of the Association]**

(a) The following NASD Rules and Interpretative Material [there under]thereunder are specifically applicable to transactions and business activities relating to PORTAL securities:

(1) through (3) No Change.

(b) The following NASD rules and Interpretative Material thereunder are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) through (2) No Change.

(3) Rule 3110[, except paragraph (b)(2)].

(c) through (d) No Change.

\* \* \* \* \*

**6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS**

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a national securities exchange shall be reported to [the] NASD in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

\* \* \* \* \*

**6950. ORDER AUDIT TRAIL SYSTEM**

**6951. Definitions**

For purposes of the Rule 6950 Series:

(a) No Change.

(c) through (i) renumbered (b) through (h).

[(j)](i) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an 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)](j) "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 and

quotation information to provide the Association with an accurate time sequenced record of orders and transactions.

(l) through (n) renumbered (k) through (m).

\* \* \* \* \*

**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) 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 (F) No Change.

(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 non-member [national securities exchange or facility operated by a registered securities association] where the trade was

transmitted], as applicable].\*

(d) No Change.

\* \* \* \* \*

**6100A. TRACS TRADE COMPARISON SERVICE**

**6110A. Definitions**

(a) through (d) No Change.

(e) The term "Participant" shall mean any member of NASD in good standing that uses the TRACS system as a[n NASD ADF] Registered Reporting ADF Market Maker or Registered Reporting ADF ECN as defined in Rule 4200A, according to the requirements of Rule 4611A and other pertinent NASD Rules, [an ECN registered in accordance with Rule 4623A,] an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.

(f) Reserved. [The terms "Participant," "TRACS 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 listed in Rule 6120A(a)(5) below and their qualifying members.]

(g) No Change.

(h) The term "Reportable TRACS Transaction" shall mean those transactions in a

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\* The text of proposed paragraph (I) of Rule 6954(c)(6) inadvertently was not underlined in the original filing. We have underlined the entire paragraph, as proposed in the original filing, and are showing the proposed deletions as part of this Amendment No. 1.

TRACS eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule 4630A[, 5400 and 6400A] Series. The term also shall include transactions in TRACS eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term "Reporting Party" or "Reporting Member" shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4630A Series.

(j) No Change.

(k) The term "TRACS ECN" shall mean a member of NASD that is a Registered Reporting ADF ECN [an electronic communications network ("ECN")] that elects to display orders in NASD's Alternative Display Facility [pursuant to Rule 4623A ]and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. [This term shall also include an NASD member that is an alternative trading system ("ATS") that displays orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.]

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

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

(n) No Change.

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

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

(a) (1) No Change.

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

(A) through (B) No Change.

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

(D) through (E) No Change.

(3) through (4) No Change.

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

(A) through (E) No Change.

(6) No Change.

**(b) Participant Obligations in TRACS**



(1) through (5) No Change.

**6130A. Trade Report Input**

**(a) Reportable TRACS Transactions**

Members shall utilize TRACS to report transactions that are required to be reported to NASD through the ADF pursuant to the Rule 4630A [and 5430] Series, including executions of less than one round lot if those executions are to be compared and locked-in. [Members may utilize TRACS to report transactions that are eligible to be reported to NASD pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in.] TRACS also will process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4630A Series will be transmitted to the applicable securities information processor; 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 TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC.

**(b) When and How Trade Reports are Submitted to TRACS**

(1) No Change.

(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if

a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule [4632(c) or (d)]4632A, as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.

(3) No Change.

(4) Reporting [NASD] Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting [NASD] Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) No Change.

#### **6140A. TRACS Processing**

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

##### **(a) Trade Acceptance**

The [reporting party] 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 TRACS system at the end of trade date processing;

(b) No Change.

\* \* \* \* \*

**9000. CODE OF PROCEDURE**

**9100. APPLICATION AND PURPOSE**

\* \* \* \* \*

**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 trading-related rules such as the Rules 3300, 4000, 4000A, 5000, 6000 and 6000A Series [those Rules designated as Trading Rules (Rule 3300 Series), the Trade Reporting Facility Rules (Rule 4000 Series), NASD Alternative Display Facility Rules (Rule 4000A Series), other NASD 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.

\* \* \* \* \*

**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, 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. [Reserved] PROCEDURES ON GRIEVANCES CONCERNING THE  
AUTOMATED SYSTEMS**

**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 NASD, 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, or the Uniform Practice Code as set forth in the Rule 11000 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 NASD relating to automated quotation, execution or communications system owned or

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 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 or telephonically 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 Committee**

The decision shall be subject to review by a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members (the "Committee") 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 Committee, shall not operate as a stay of the

decision.

**9770. Findings of the Committee on Review**

Upon consideration of the record, and after such further hearings as it shall order, the Committee shall affirm, modify, reverse, dismiss, or remand the decision. The Committee shall set forth specific grounds upon which its determination is based.

**9780. Discretionary Review by the Board**

Determinations of the Committee 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 Committee's decision but which is 15 calendar days or more following the decision of the Committee. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Committee within the 15 calendar day period following the decision of the Committee. 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 Committee determinations. The Board shall affirm, modify or reverse the determinations of the Committee or remand the matter to the Committee 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 NASD action upon expiration of the time allowed for appeal or call for review. In any case where a person feels aggrieved by any final NASD action issued pursuant to Rule 9770 or Rule 9780, the person may make application for

review to the Commission in accordance with the Act.

\* \* \* \* \*

**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 exchange-listed 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. [Reserved] Clearly Erroneous Transactions**

**(a) Authority to Review Transactions Pursuant to Complaint of Market**

**Participant**

**(1) Scope of Authority.**

(A) Subject to the limitations described in paragraph (a)(2)(C) below, 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 in a non-Nasdaq exchange-listed security arising out of the use or operation of any execution or communication system owned or operated by Nasdaq and approved by the Commission; 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 if the transaction is eligible for review



under the Rule and if 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 or person associated with a 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 of execution time.

(B) Once a complaint has been received in accord with paragraph (a)(2)(A) above, 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). Such supporting information must include the approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if the transactions are not anonymous, Nasdaq system used to execute the transactions, and the reason the review is being sought. If Nasdaq receives a complaint that does not contain all of the required supporting

information, Nasdaq shall immediately notify the filer that the complaint is deficient.

(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

(i) the complainant has provided all of the supporting information required under paragraph (a)(2)(B), and

(ii) For trades in non-Nasdaq exchange-listed securities executed between the time when the primary market for the security first posts an executable two-sided quote for its regular market trading session and 4:00 p.m. Eastern Time, the price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

<b><u>Inside Price</u></b>	<b><u>Minimum Threshold</u></b>
<u>\$0 – \$0.99</u>	<u><math>\\$0.02 + (0.10 \times \text{Inside Price})</math></u>
<u>\$1.00 – \$4.99</u>	<u><math>\\$0.12 + (0.07 \times (\text{Inside Price} - \\$1.00))</math></u>
<u>\$5.00 – \$14.99</u>	<u><math>\\$0.40 + (0.06 \times (\text{Inside Price} - \\$5.00))</math></u>
<u>\$15 or more</u>	<u>\$1.00</u>

For a transaction to buy (sell) a non-Nasdaq exchange-listed

security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed. A “non-Nasdaq exchange-listed security” means a security for which transaction reports are disseminated under the Consolidated Tape Association Plan. The “primary market” for a non-Nasdaq exchange-listed security is the market designated as the primary market under the Consolidated Tape Association Plan.

(D) If a complaint is determined to be eligible for review, 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). Either party to a disputed trade may request the written information provided by the other party pursuant to paragraph (a)(2).

(E) Notwithstanding paragraphs (a)(2)(B) and (D) 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.

(F) Each member or person associated with a 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 paragraphs (a)(2)(B) and (D) above.

(G) Once a party has applied to Nasdaq for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) 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), or (ii) the complainant withdraws its application for review prior to the notification of counterparties pursuant to paragraph (a)(2)(D).

**(b) Procedures for Reviewing Transactions on NASD's or Nasdaq's Own**

**Motion**

(1) 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 in non-Nasdaq exchange-listed securities arising out of or

reported through any such quotation, execution, communication, or trade reporting system. 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 the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions 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, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD 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 the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 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”) or the Uniform Practice Code (“UPC”) Committee**

(1) Subject to the limitations described in paragraph (c)(2), a member or person associated with a member may appeal a determination made under paragraph (a) to the MORC. A member or person associated with a member may appeal a determination made under paragraph (b)(1) to the MORC, or a determination made under paragraph (b)(2) to the UPC Committee, 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 or NASD, as applicable, within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq or NASD notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade

that is the subject of the appeal 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 appropriate Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), once a party has appealed a determination to the appropriate Committee, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such hearings as it may in its discretion order, the MORC or the UPC Committee, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided

under paragraph (c)(1). If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

(3) The decision of a Committee pursuant to an appeal, or a determination by a Nasdaq or NASD officer that is not appealed, shall be final and binding upon all parties and shall constitute final action on the matter in issue. Any determination by a Nasdaq or NASD officer pursuant to paragraph (a) or (b) or any decision by a Committee pursuant to paragraph (c) 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 pursuant to this Rule shall be submitted within the time parameters specified herein via such telecommunications procedures as Nasdaq or NASD may announce from time to time in an NASD Notice to Members or Nasdaq Head Trader Alert, as applicable. Materials shall be deemed received at the time indicated by the equipment (i.e., facsimile machine or computer) receiving the materials. Nasdaq and NASD, in their sole and absolute discretion, reserve the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq or NASD 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 or NASD may



instead provide notice to parties via Nasdaq telecommunications protocols, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

\* \* \* \* \*

**IM-11890-3. Application of Rule 11890(a)(2)(C)**

The following example is intended to assist market participants in understanding the minimum price deviation thresholds in paragraph (a)(2)(C) and their effect on the eligibility of transactions for review under Rule 11890.

ABC[D], a non-Nasdaq exchange-listed security, has an inside market of (bid) \$12.00 – \$12.05 (ask). Market Maker A (MMA) enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order 'sweeps' the Nasdaq [Market Center] order file, which reflects 1,000 shares of liquidity offered at each of ten prices ranging from \$12.05 to \$12.95. Executions occur, moving through the depth of file, as follows:

- Trade #1 – 1000 shares @ \$12.05 (9000 remaining)
- Trade #2 – 1000 shares @ \$12.10 (8000 remaining)
- Trade #3 – 1000 shares @ \$12.15 (7000 remaining)
- Trade #4 – 1000 shares @ \$12.25 (6000 remaining)
- Trade #5 – 1000 shares @ \$12.35 (5000 remaining)
- Trade #6 – 1000 shares @ \$12.45 (4000 remaining)
- Trade #7 – 1000 shares @ \$12.55 (3000 remaining)
- Trade #8 – 1000 shares @ \$12.65 (2000 remaining)

- Trade #9 – 1000 shares @ \$12.90 (1000 remaining)
- Trade #10 – 1000 shares @ \$12.95 (complete)

The inside offer at the time the first share of the order was executed is \$12.05, so the minimum price deviation threshold is determined using the following formula:

$$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00)) = \$0.40 + (0.06 \times (\$12.05 - \$5.00)) = \$0.82$$

Thus, to be eligible for review, a transaction must be at a price that is at least \$0.82 higher than the original best offer price (i.e.,  $\$12.05 + \$0.82 = \$12.87$ ). MMA could petition for review of trades #9 and #10, priced at \$12.90 and \$12.95 respectively, but trades #1 through #8 would not be eligible for review. The sole basis for an appeal to the MORC of the determination that trades #1 through #8 are not eligible for review would be an assertion of a mistake of material fact. For example, an appeal could be based upon an assertion that the Nasdaq officer had made an arithmetical error in determining the minimum price deviation threshold, or had erred in determining the applicable inside price.

\* \* \* \* \*

**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”), and the controlled subsidiary The Nasdaq Stock Market, Inc. (referenced individually as “Nasdaq”) (referenced collectively as the “Subsidiaries”). The term “Association” shall refer to the NASD and the Subsidiaries collectively.

A. Other Defined Terms— 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. [For purposes of Section III herein, the term “other markets or systems” does not include markets or systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.]

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.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 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.

C. through E. No Change.

## **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 t. No Change.

u. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for Nasdaq securities traded in the third market and securities traded 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. Uniform Practice Code Committee

a. The 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. No Change.

### 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] the third market for non-Nasdaq securities listed on a registered exchange and the automated systems supporting it.

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 in the third market for non-Nasdaq securities listed on a registered exchange.

c. No Change.

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, and] in the third market for non-Nasdaq securities listed on a registered exchange, (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 third market for non-Nasdaq securities listed on a registered exchange [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 third market for non-Nasdaq securities listed on a registered exchange [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 market[s and systems] have met the standards established for participants; and (ii) persons participating in [any of the] such market[s or systems] continue to meet the standards established for participants.

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

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

i [m]. To determine allocation of Nasdaq resources.

j [n]. To manage external relations on matters related to trading on and the operation and functions of the market and systems operated by Nasdaq [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.

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

2. No Change.

## 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; or (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 under the Delegation Plan:

(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] the third market[s] for non-Nasdaq securities listed on a registered exchange [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 therein [in The Nasdaq Stock Market].

(ii) No Change.

(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) No Change.

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 Rules 5265 and 11890 of the Rules of the Association in accordance with the procedures specified therein with respect to non-Nasdaq securities listed on a registered exchange. NASD Regulation shall receive weekly reports of all determinations made by the staff or MORC under Rules 5265 and 11890 with respect to non-Nasdaq securities listed on a registered exchange, for regulatory review.

(b) No Change.

#### **IV. Stockwatch**

The Stockwatch section handles the trading halt functions for [The Nasdaq Stock Market securities,] non-Nasdaq 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.

\* \* \* \* \*

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

\* \* \* \* \*

#### **ARTICLE XIV**

#### **UNIFORM PRACTICE 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.

**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 of [f]r the facilities of the NASD in aid of any political party or candidate for any public office.

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

\* \* \* \* \*

**BY-LAWS OF THE NASDAQ STOCK MARKET, INC.**

**ARTICLE I**

**DEFINITIONS**

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

(a) No Change.

(b) "Board" means the Board of Directors of [Nasdaq]the Corporation;

(c) through (d) No Change.

(e) "Corporation" means The Nasdaq Stock Market, Inc.;

(f) "day" means calendar day;

(f)(g) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

(g)(h) "Delaware law" means the General Corporation Law of the State of

Delaware;

(h) "Delegation Plan" means the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries" as approved by the Commission, and as amended from time to time;]

(i) "Director" means a member of the Board[, excluding the Chief Executive Officer of the NASD;]

(j) "Industry Director" or "Industry committee member" means a Director (excluding any two officers of [Nasdaq]the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")) or [Nasdaq Listing and Hearing Review Council or] committee member who (1) is or has served in the prior three years as an officer, director, or



employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the [NASD, NASD Regulation, Nasdaq, or Amex] Corporation or any affiliate thereof or to the NASD ([and]or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

(k) "NASD" means the National Association of Securities Dealers, Inc. and its affiliates;

(l) ["Nasdaq" means The Nasdaq Stock Market, Inc.]"Nominating Committee" means that Nominating Committee appointed pursuant to these By-Laws;

(m) ["Nasdaq Listing and Hearing Review Council" means a body appointed by the Board pursuant to Article V of these By-Laws;] "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer or employee of an issuer of securities listed on the national securities exchange operated by The NASDAQ Stock Market LLC; or (3) any other individual who would not be an Industry Director or Industry committee member; and

(n) ["NASD Board" means the NASD Board of Governors; ]

[(o) "NASD Regulation" means NASD Regulation, Inc.;

[(p) "Nominating Committee" means the Nominating Committee appointed pursuant to these By-Laws;]

[(q) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the Staff Directors) or Nasdaq Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;]

[(r) "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;]

[(s)] "Public Director" or "Public committee member" means a Director [or Nasdaq Listing and Hearing Review Council] or committee member who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or the NASD[, NASD Regulation, or Nasdaq];

[(t) "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;]

[(u) "Amex" means American Stock Exchange LLC.]

## **ARTICLE II**

### **OFFICES**

#### **Location**

**Sec. 2.1** The address of the registered office of [Nasdaq] the Corporation in the State

of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. [Nasdaq] The Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of [Nasdaq] the Corporation may require.

### **Change of Location**

**Sec. 2.2** In the manner permitted by law, the Board or the registered agent may change the address of [Nasdaq]the Corporation's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

## **ARTICLE III**

### **MEETINGS OF STOCKHOLDERS**

#### **Annual Meetings of Stockholders**

**Sec. 3.1** (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to [Nasdaq]the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating Committee or (iii) by any stockholder of [Nasdaq]the Corporation who was a stockholder of record of [Nasdaq]the Corporation at the time the notice provided for in this Section 3.1 is delivered to the Secretary of [Nasdaq]the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 3.1.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given

timely notice thereof in writing to the Secretary of [Nasdaq]the Corporation and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by [Nasdaq]the Corporation). [For purposes of the first annual meeting of stockholders of Nasdaq held after 2000, the first anniversary of the 2000 annual meeting of stockholders shall be deemed to be May 15, 2001.] In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and [Rule 14a-11]the rules thereunder (and such person's written consent to being named in the proxy statement as a nominee and to

serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-Laws of [Nasdaq]the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on [Nasdaq]the Corporation's books, and of such beneficial owner, (B) the class and number of shares of capital stock of [Nasdaq]the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a representation that the stockholder is a holder of record of stock of [Nasdaq]the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of [Nasdaq]the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. [Nasdaq]The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of [Nasdaq]the Corporation.

(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by [Nasdaq]the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by [Nasdaq]the Corporation.

### **Special Meetings of Stockholders**

**Sec. 3.2** Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to [Nasdaq]the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to [Nasdaq]the Corporation's notice of meeting (a) by or at the direction of the Board or the Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of [Nasdaq]the Corporation who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of [Nasdaq]the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event [Nasdaq]the Corporation calls a special meeting of stockholders for the purpose of electing

one or more directors to the Board, any such stockholder entitled to vote in such election may nominate a person or persons (as the case may be) for election to such position(s) as specified in [Nasdaq]the Corporation's notice of meeting, if the stockholder's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of [Nasdaq]the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

### **General**

**Sec. 3.3** (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of [Nasdaq]the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the



nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of [Nasdaq]the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by [Nasdaq]the Corporation.

(b) For purposes of this Article III, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by [Nasdaq]the Corporation with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in [Nasdaq]the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

### **Conduct of Meetings**

**Sec. 3.4** The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of [Nasdaq]the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

## **ARTICLE IV**

### **BOARD OF DIRECTORS**

## **General Powers**

**Sec. 4.1** The property, business, and affairs of [Nasdaq]the Corporation shall be managed by or under the direction of the Board. The Board may exercise all such powers of [Nasdaq]the Corporation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation, or these By-Laws[, or the Delegation Plan for the organization, development, and operation of electronic data processing and communications facilities, including computer hardware and software, for the purposes of: (a) supporting the operation, regulation, and surveillance of The Nasdaq Stock Market and other organized securities markets established for trading equity securities, debt securities, derivative instruments, or other financial products that may be developed; (b) supporting the efficient clearance and settlement of securities transactions; (c) supporting various elements of the national market system pursuant to Section 11A of the Act and the rules thereunder; (d) assisting the NASD in fulfilling its self-regulatory responsibilities as set forth in Section 15A of the Act; and (e) supporting such other initiatives as the Board may deem appropriate.] To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to [Nasdaq]the Corporation's staff [in a manner not inconsistent with the Delegation Plan].

## **Number of Directors**

**Sec. 4.2** No Change.

## **Qualifications**

**Sec. 4.3** Directors need not be stockholders of [Nasdaq]the Corporation. The number

of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives.

### **Election**

**Sec. 4.4** Except as otherwise provided by law[,], or these By-Laws[,], or the Delegation Plan], after the first meeting of [Nasdaq]the Corporation at which Directors are elected, Directors of [Nasdaq]the Corporation shall be elected each year at the annual meeting of the stockholders, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefore, the Directors shall cause such election to be held as soon thereafter as convenient.

### **Resignation**

**Sec. 4.5** No Change.

### **Removal**

**Sec. 4.6** Any or all of the Directors may be removed from office at any time by the affirmative vote of at least 66 2/3 percent of the total voting power of the outstanding shares of capital stock of [Nasdaq]the Corporation entitled to vote generally in the election of directors, voting together as a single class.

### **Disqualification**

**Sec. 4.7** No Change.

### **Filling of Vacancies**

**Sec. 4.8** No Change.

## **Quorum and Voting**

**Sec. 4.9** No Change.

### **Regulation**

**Sec. 4.10** The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of [Nasdaq]the Corporation, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, [the Rules of the Association, or the By-Laws of the NASD,] as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of account or reports made to [Nasdaq]the Corporation by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of [Nasdaq]the Corporation, or in relying in good faith upon other records of [Nasdaq]the Corporation.

### **Meetings**

**Sec. 4.11** No Change.

#### **Notice of Meetings; Waiver of Notice**

**Sec. 4.12** (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to [Nasdaq]the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such

meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) through (c) No Change.

### **Committees**

**Sec. 4.13** (a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only [after]by the Board, after appropriate notice.

(b) [The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to Nasdaq by the NASD under the Delegation Plan. Such delegations shall be in conformance with applicable law, the Restated Certificate of Incorporation, these By-Laws, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, t]The Board may, by resolution or resolutions

adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of [Nasdaq]the Corporation to the extent permitted by law [and not inconsistent with the Delegation Plan]. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of [Nasdaq]the Corporation to be affixed to all papers that may require it.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of [Nasdaq]the Corporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all [Nasdaq]the Corporation's property and assets; or recommending to the stockholders a dissolution of [Nasdaq]the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of [Nasdaq]the Corporation between meetings of the Board, and which may authorize the seal of [Nasdaq]the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the

whole Board. An Executive Committee member shall hold office for a term of one year.

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of [Nasdaq]the Corporation, including recommendations for [Nasdaq]the Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by [Nasdaq]the Corporation. A Finance Committee member shall hold office for a term of one year.

(f) The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of [Nasdaq]the Corporation. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year.

(g) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of four or five Directors, none of whom shall be officers or employees of [Nasdaq]the Corporation. A majority of the Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(ii) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular Nasdaq member, company, or



individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of Nasdaq to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.]

(h) The Board may appoint a Nominating Committee. The Nominating Committee shall nominate Directors for each vacant or new Director position on the Board [and members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Board].

(i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public committee members. If the Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of [Nasdaq]the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry committee members shall be current members of the [Nasdaq] Board.

(ii) A Nominating Committee member may not simultaneously serve on the

Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

(iii) Members of the Nominating Committee shall be appointed annually by the Board and may be removed by majority vote of the Board.

(iv) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(i) through (j) No Change.

(k) Upon request of the Secretary of [Nasdaq]the Corporation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of [Nasdaq]the Corporation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of [Nasdaq]the Corporation, and shall report immediately to the Secretary any change in such information.

**Conflicts of Interest; Contracts and Transactions Involving Directors**

**Sec. 4.14** (a) A Director [or a member of the Nasdaq Listing and Hearing Review Council or a committee] shall not directly or indirectly participate in any adjudication of the interests of any party if that Director [or Nasdaq Listing and Hearing Review 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 Nasdaq Listing and Hearing Review Council or committee member] shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between [Nasdaq]the Corporation and one or more of its Directors or officers, or between [Nasdaq]the Corporation 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, even though the disinterested Directors be less than a quorum; (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, even though the disinterested Directors be less than a quorum; 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 stockholders

entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders.

**[Communication of Views Regarding NASD or NASD Regulation Election or Nomination]**

**[Sec. 4.15** Nasdaq, the Board, any committee, the Nasdaq Listing and Hearing Review Council, and Nasdaq staff shall not take any position publicly or with an NASD member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to the NASD By-Laws or the NASD Regulation By-Laws. A Director, committee member, or Nasdaq Listing and Hearing Review Council member may communicate his or her views with respect to a candidate if such individual acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, or any committee. Nasdaq, the Board, the Nasdaq Listing and Hearing Review Council, any committee, and the Nasdaq staff shall not provide any administrative support to any candidate in a contested election or nomination conducted pursuant to the NASD By-Laws or the NASD Regulation By-Laws.]

**Action Without Meeting**

**Sec. 4.1[6]5** Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in accordance with applicable law.]

**[ARTICLE V]**

**[NASDAQ LISTING AND HEARING REVIEW COUNCIL]**

**[Appointment and Authority]**

**[Sec. 5.1** The Board shall appoint a Nasdaq Listing and Hearing Review Council. The Nasdaq Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws, the Rules of the Association, and the Delegation Plan with respect to listing decisions. The Nasdaq Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Nasdaq Listing and Hearing Review Council as the Board deems appropriate in a manner not inconsistent with the Delegation Plan.]

**[Number of Members and Qualifications]**

**[Sec. 5.2** (a) The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than 18 members, of which not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing Review Council shall include at least five Non-Industry members.]

(b) As soon as practicable following the appointment of members, the Nasdaq Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.]

**[Nomination Process]**

**[Sec. 5.3** The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information]

**[Term of Office]**

**[Sec. 5.4** (a) Beginning in January 2003, except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason. Prior to January 2003, the term of office for each Nasdaq Listing and Hearing Review Council member shall be two years.]

[(b) The Nasdaq Listing and Hearing Review Council shall be divided into three classes. The term of office of those of the first class shall expire in January 2004, the term of office of those of the second class shall expire in January 2005, and the term of office of those of the third class shall expire in January 2006. Beginning in January 2003, members shall be appointed for a term of three years to replace those whose terms expire.]

[(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two

consecutive terms following the expiration of such member's initial term.]

**[Resignation]**

**[Sec. 5.5** A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.]

**[Removal]**

**[Sec. 5.6** Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.]

**[Disqualification]**

**[Sec. 5.7** Notwithstanding Section 5.4, the term of office of a Nasdaq Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, that: (a) The member no longer satisfies the classification (Industry or Non-Industry) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the Nasdaq Listing and Hearing Review Council set forth in Section 5.2. If the term of office of a Nasdaq Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing Review Council shall not be deemed to be in violation of Section 5.2 by virtue of such vacancy.]

**[Filling of Vacancies]**

**[Sec. 5.8** If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 5.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.]

**[Quorum and Voting]**

**[Sec. 5.9** At all meetings of the Nasdaq Listing and Hearing Review Council, unless otherwise set forth in these By-Laws, a quorum for the transaction of business shall consist of a majority of the Nasdaq Listing and Hearing Review Council, including one Non-Industry member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.]

**[Meetings]**

**[Sec. 5.10** The members of the Nasdaq Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.]

**ARTICLE VI**

**COMPENSATION**

**Compensation of Board[, Council, and Committee] Members**



**Sec. 6.1** The Board may provide for reasonable compensation of the Chair of the Board[, ] and the Directors[, Nasdaq Listing and Hearing Review Council members, and the members of any committee]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of [Nasdaq]the Corporation.

## **ARTICLE VII**

### **OFFICERS, AGENTS, AND EMPLOYEES**

#### **Principal Officers**

**Sec. 7.1** The principal officers of [Nasdaq]the Corporation shall be elected by the Board and shall include a Chair, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of [Nasdaq]the Corporation.

#### **Election of Principal Officers; Term of Office**

**Sec. 7.2** (a) The principal officers of [Nasdaq]the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.11(a). Failure to elect any principal officer annually shall not dissolve [Nasdaq]the Corporation.

(b) through (c) No Change.

#### **Subordinate Officers, Agents, or Employees**

**Sec. 7.3** In addition to the principal officers, [Nasdaq]the Corporation may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the Chief Executive Officer, the President, or any officer designated by the Board, may from time to time determine. Agents and employees of [Nasdaq]the Corporation shall be under the supervision and control of the officers of [Nasdaq]the Corporation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

#### **Delegation of Duties of Officers**

**Sec. 7.4** The Board may delegate the duties and powers of any officer of [Nasdaq]the Corporation to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

#### **Resignation and Removal of Officers**

**Sec. 7.5** (a) No Change.

(b) Any officer of [Nasdaq]the Corporation may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with [Nasdaq]the Corporation.

#### **Bond**

**Sec. 7.6** [Nasdaq]The Corporation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

**Chair of the Board**

**Sec. 7.7** No Change.

**Chief Executive Officer**

**Sec. 7.8** The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board and stockholders at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of [Nasdaq]the Corporation and shall have general supervision over the business and affairs of [Nasdaq]the Corporation. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

**President**

**Sec. 7.9** The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs of [Nasdaq]the Corporation. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

**Vice President**

**Sec. 7.10** No Change.

**Secretary**

**Sec. 7.11** The Secretary shall act as Secretary of all meetings of the stockholders and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of [Nasdaq]the Corporation, and shall have supervision over the care and custody of the corporate records and the corporate seal of [Nasdaq]the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of [Nasdaq]the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

#### **Assistant Secretary**

**Sec. 7.12** No Change.

#### **Treasurer**

**Sec. 7.13** The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of [Nasdaq]the Corporation and shall cause the funds of [Nasdaq]the Corporation to be deposited in the name of [Nasdaq]the Corporation in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of [Nasdaq]the Corporation. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the

Treasurer from time to time by the Board, the Chief Executive Officer or the President.

**Assistant Treasurer**

**Sec. 7.14** No Change.

**ARTICLE VIII**

**INDEMNIFICATION**

**Indemnification of Directors, Officers, Employees, and Agents[, Nasdaq Listing and  
Hearing Review Council and Committee Members]**

**Sec. 8.1** (a) [Nasdaq]The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of [Nasdaq]the Corporation [or a Nasdaq Listing and Hearing Review Council or committee member], or is or was a Director, officer, or employee of [Nasdaq]the Corporation who is or was serving at the request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of [Nasdaq]the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or

proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of [Nasdaq]the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) [Nasdaq]The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) [Nasdaq]The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of [Nasdaq]the Corporation or is or was an agent of [Nasdaq]the Corporation who is or was serving at the request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) [Nasdaq]The Corporation may, in its discretion, pay the expenses (including

attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by [Nasdaq]the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of [Nasdaq]the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to [Nasdaq]the Corporation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, [Nasdaq Listing and Hearing Review Council or committee member,] employee, or

agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), [Nasdaq]the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) [Nasdaq]The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) No Change.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by [Nasdaq]the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, [Nasdaq]the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

### **Indemnification Insurance**

**Sec. 8.2** [Nasdaq]The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, [Nasdaq Listing and Hearing Review Council or committee member,] employee, or agent of [Nasdaq]the



Corporation, or is or was serving at the request of [Nasdaq]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not [Nasdaq]the Corporation would have the power to indemnify such person against such liability hereunder.

## ARTICLE IX

### CAPITAL STOCK

#### Certificates

**Sec. 9.1** Each stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in [Nasdaq]the Corporation owned by such stockholder.

#### Signatures

**Sec. 9.2** (a) Certificates for shares of capital stock of [Nasdaq]the Corporation shall be signed in the name of [Nasdaq]the Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of [Nasdaq]the Corporation or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than [Nasdaq]the Corporation or its employee, or by a registrar other than [Nasdaq]the Corporation or its employee, any other signature on the certificate may be a facsimile. In the

event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by [Nasdaq]the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

### **Stock Ledger**

**Sec. 9.3** (a) A record of all certificates for capital stock issued by [Nasdaq]the Corporation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) [Nasdaq]The Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. [Nasdaq]The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not [Nasdaq]the Corporation shall have express or other notice thereof.

### **Transfers of Stock**

**Sec. 9.4** (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital

stock of [Nasdaq]the Corporation. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of [Nasdaq]the Corporation only upon delivery to [Nasdaq]the Corporation or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

### **Cancellation**

**Sec. 9.5** Each certificate for capital stock surrendered to [Nasdaq]the Corporation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 9.6 until such existing certificate shall have been canceled.

### **Lost, Stolen, Destroyed, and Mutilated Certificates**

**Sec. 9.6** In the event that any certificate for shares of capital stock of [Nasdaq]the Corporation shall be mutilated, [Nasdaq]the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, [Nasdaq]the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or

destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to [Nasdaq]the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify [Nasdaq]the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

#### **Fixing of Record Date**

**Sec. 9.7** The Board may fix a record date in accordance with Delaware law.

### **ARTICLE X**

#### **MISCELLANEOUS PROVISIONS**

##### **Corporate Seal**

**Sec. 10.1** The seal of [Nasdaq]the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of [Nasdaq]the Corporation, the year of its incorporation, and the words "Corporate Seal" and "Delaware." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

##### **Fiscal Year**

**Sec. 10.2** The fiscal year of [Nasdaq]the Corporation shall begin the 1st day of January in each year, or such other month as the Board may determine by resolution.

##### **Waiver of Notice**

**Sec. 10.3** No Change.

**Execution of Instruments, Contracts, Etc.**

**Sec. 10.4** (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of [Nasdaq]the Corporation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of [Nasdaq]the Corporation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of [Nasdaq]the Corporation by any principal officer or subordinate officer of [Nasdaq]the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of [Nasdaq]the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

**Form of Records**

**Sec. 10.5** Any records maintained by [Nasdaq]the Corporation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on,

or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

## **ARTICLE XI**

### **AMENDMENTS; EMERGENCY BY-LAWS**

#### **By Stockholders**

**Sec. 11.1** No Change.

#### **By Directors**

**Sec. 11.2** No Change.

#### **Review by The NASDAQ Stock Market LLC**

**Sec. 11.3** For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, any proposed adoption, alteration, amendment, change or repeal (an “amendment”) of any By-Law shall be submitted to the Board of Directors of The NASDAQ Stock Market LLC (the “Exchange Board”), and if the Exchange Board determines that such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

#### **Emergency By-Laws**

**Sec. 11.[3]4** The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency

resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which [Nasdaq]the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

## **ARTICLE XII**

### **THE NASDAQ STOCK MARKET LLC**

#### **Self-Regulatory Organization Function of The NASDAQ Stock Market LLC**

**Sec. 12.1** (a) For so long as the Corporation shall control The NASDAQ Stock Market LLC, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of The NASDAQ Stock Market LLC and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of The NASDAQ Stock Market LLC relating to its regulatory functions (including disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of The NASDAQ Stock Market LLC to carry out its responsibilities under the Act.

(b) All books and records of The NASDAQ Stock Market LLC reflecting confidential information pertaining to the self-regulatory function of The NASDAQ Stock Market LLC (including but not limited to disciplinary matters, trading data, trading practices and audit information) which shall come into the possession of the Corporation, and the

information contained in those books and records, shall be retained in confidence by the Corporation and the Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. Nothing in these By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission. The Corporation's books and records shall be subject at all times to inspection and copying by the Commission. The Corporation's books and records relating to The NASDAQ Stock Market LLC shall be maintained in the United States.

(c) To the extent they are related to the activities of The NASDAQ Stock Market LLC, the books, records, premises, officers, Directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of The NASDAQ Stock Market LLC for the purposes of, and subject to oversight pursuant to, the Act.

#### **Cooperation with the Commission**

**Sec. 12.2** The officers, Directors, employees, and agents of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and The NASDAQ Stock Market LLC in respect of the Commission's oversight responsibilities regarding The NASDAQ Stock Market LLC and the self-regulatory functions and responsibilities of The NASDAQ Stock Market LLC.

#### **Consent to Jurisdiction**



Sec. 12.3 The Corporation and its officers, Directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and The NASDAQ Stock Market LLC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of The NASDAQ Stock Market LLC, and by virtue of their acceptance of any such position, shall be deemed to 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 it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission, or The NASDAQ Stock Market LLC, 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 of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, Directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of The NASDAQ Stock Market LLC.

#### **Further Assurances**

Sec. 12.4. The Corporation shall take such action as is necessary to insure that its officers, Directors, employees, and agents consent to the applicability of Sections 12.1(c) and 12.3 with respect to activities related to The NASDAQ Stock Market LLC.

#### **Board Action with Respect to Voting Limitations of the Certificate of Incorporation**

Sec. 12.5 For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, a resolution of the Board to approve an exemption for any

person under Article Fourth, Section C.6(b) of the Restated Certification Incorporation of the By-Laws shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under Section 19 of the Act.

\* \* \* \* \*

**0100. GENERAL PROVISIONS**

\* \* \* \* \*

**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. and 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.

\* \* \* \* \*

**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-2110-2. Trading Ahead of Customer Limit Order**

**(a) General Application**

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in [Nasdaq and] exchange-listed securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.<sup>1</sup>

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<sup>1</sup> No Change to footnote text.

Rule 2110 states that:

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

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is

as favorable as possible to the customer under prevailing market conditions.

### **Interpretation**

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in [a Nasdaq or] an exchange-listed security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than \$100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their

customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

As outlined in NASD Notice to Members 97-57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:

- If actual spread is greater than  $1/16$  of a point, a firm must price improve an incoming order by at least a  $1/16$ . For stocks priced under \$10 (which are quoted in  $1/32$  increments) , the firm must price improve by at least  $1/64$ .
- If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is \$0.01; and

2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the member must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01)

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No Change.

\* \* \* \* \*

#### **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) through (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) through (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.

(11) 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 (50) No Change.

**(51) 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.

(52) through (53) No Change.

**(54) 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)].

(55) through (85) No Change.

\* \* \* \* \*

**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]with respect to a security listed on the Nasdaq Stock Market LLC, 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 with NASD or Nasdaq in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(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) through (d) 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) through (DDD) renumbered (ZZ) through (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 (viii) 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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**[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) 1/4 of \$1, if the member's bid price is \$.50 or less;]

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

[(3) 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 (e) No Change.

#### **(f) Requirements When Using Predispute Arbitration Agreements for Customers Accounts**

(1) through (2) No Change.

(3) (A) A member shall provide a customer with a copy of any predispute

arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this [Rule]paragraph, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) No Change.

(4) through (7) No Change.

(g) No Change.

**(h) Order Audit Trail System Record keeping Requirements**

(1) Each member that is a Reporting Member, as that term is defined in Rule 6951[(n)](m), shall record and maintain, with respect to each order, as that term is defined in Rule 6951[(j)](i), for such security that is received or executed at its trading department:

(A) through (C) No Change.

(2) No Change.

(i) through (j) No Change.

**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 (c) 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] a security pursuant to its authority under Rule 4633(a)(3), Rule 4120A(a)[(2)](3), or Rule 6431(a)(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] 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] that 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, 2006.

\* \* \* \* \*

**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) No Change.

(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The Association does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the Association as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule [3350]5100.

(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) Rule [3350]5100 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule [3350]5100.

(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) The Association believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, the Association will consider any such activity as a violation of Rule [3350]5100.

[(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, with the exception of the Rule 4400 Series and Rule 4700 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 Capital Market 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 Capital Market securities and convertible bonds listed on Nasdaq.

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

(4) “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.

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

(6) “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.

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

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

(9) “Nasdaq Capital Market security” means any authorized security in The Nasdaq Capital Market.

(10) “Normal business hours” means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.

(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 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.

**4400. [Nasdaq National Market — Issuer Designation Requirements]**

[Pursuant to SEC Rule 11Aa2-1, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission under which securities satisfying the requirements of this Rule 4400 Series are covered by the transaction reporting plan and transactions in such securities are subject to the transaction reporting provisions of the Rule 4630 Series.]

**[IM-4400. Impact of Non-Designation of] Trading of Certain Dually Listed Securities**

[To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500,] The NASDAQ Stock Market LLC

(the “Nasdaq Exchange”) [shall] permits issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq National Market (“NNM”). Nasdaq [shall] makes an independent determination of whether such issuers satisfy all applicable listing requirements and [shall] requires issuers to enter into a dual listing agreement with the Nasdaq Exchange.

[While Nasdaq shall certify such dually listed securities for listing on the NNM,] Nasdaq [shall] does not exercise its authority under [the NASD] Nasdaq Exchange Rule [4400] 4390 [Series] separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”), [shall] remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. [Nasdaq] While such securities continue to trade through facilities of the NASD, NASD shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System (“ITS”) shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

[Through this interpretation, Nasdaq also resolves any potential conflicts that arise

under NASD rules as a result of a single security being both a CQS security, which is subject to one set of rules, and a listed NNM security, which is subject to a different set of rules. Specifically, d) Dually listed securities [shall be Nasdaq securities for purposes of rules related to listing and delisting, and] shall [remain] be treated as CQS securities under all [other] NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on [the Nasdaq InterMarket] the ITS/CAES System.

For example, [Nasdaq] NASD shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule [4120(a)(2) and (3)] 6431 governing CQS securities shall apply to dually listed securities[, whereas NASD Rule 4120(a)(1), (4), (5), (6), and (7) shall not]. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule [3350] 5100 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities [rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities]. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

#### **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 designated 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 designated 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 or if the Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the 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.

(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) Stock symbol of the designated security;

- (2) Number of shares or bonds;
- (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 in military format, unless another provision of NASD rules requires that a different time be included in the report; and
- (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 or bonds 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 or bonds 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 or bonds 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 or bonds 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 to the Trade Reporting

Facility:

- (1) odd-lot transactions (except in the case of bonds);
- (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. Individual transactions in convertible debt securities

cannot be aggregated pursuant to this paragraph.

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

**Example:**

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

REPORT 10,000 shares at 40.

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

**Example:**

A firm has several customer limit orders to sell 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**

With the exception of trades cancelled in accordance with Rule 11890, 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 otherwise than on an exchange in the Trade Reporting Facility 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 otherwise than on an exchange in the Trade Reporting Facility 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 trade reporting 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 on other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a designated 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.

**4700. [Nasdaq Market Center] ITS/CAES System — Execution Services**

**4701. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term "active [Nasdaq Market Center] securities" shall mean those [Nasdaq Market Center] eligible securities in which at least one [Nasdaq Market Maker or] ITS/CAES Market Maker is currently active in the [Nasdaq Market Center] system, or at least one exchange [or the Association's Alternative Display Facility] is actively quoting the security [and Nasdaq has access to the quotes of these markets under Rule 4714]. A security will not be considered an "active [Nasdaq Market Center] security" when trading [on Nasdaq] has been halted [pursuant to Rule 4120 and the interpretations thereunder] pursuant to Rule 6431.

(b) Reserved

(c) The term "Attributable Quote/Order" shall mean [have the following meaning:]

[(1) For Nasdaq Market Makers and Nasdaq ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MPID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.]

[(2) For ITS/CAES Market Makers,] a bid or offer Quote/Order that is



designated for display (price and size) next to the participant's MPID once such Quote/Order becomes the participant's best attributable bid or offer.

[(3) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MPID in the Nasdaq Quotation Montage.]

(d) Reserved

(e) Reserved [The term "automatic refresh size" shall mean the default size to which a Nasdaq Market Maker's or ITS/CAES Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.]

(f) Reserved

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted by ITS/CAES Market Makers.[to Nasdaq by Quoting Market Participants or Order Entry Firms. Order Entry Firms are not permitted to enter Displaced Quotes/Orders in ITS Securities.]

(h) No Change.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the [Nasdaq Market Center]system a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) through (l) No Change.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the [Nasdaq Market Center]system, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the [Nasdaq Market Center]system, is priced at the inside bid or lower.

(n) No Change.

(o) The term "Non-Attributable Quote/Order" shall mean[:]

[(1) for orders in Nasdaq-listed securities, a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or Order Entry Firm and is designated for display (price and size) on an anonymous basis in the order display service of the Nasdaq Market Center. UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).]

[(2) for orders in ITS Securities,] a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis in the [Nasdaq] [O]order [D]display [Facility]service of the system. Order Entry Firms shall be eligible to enter Non-Attributable orders in [ITS]eligible [S]securities only if they are designated as Immediate or Cancel.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by a [Nasdaq Market Center] Participant and is not directed to any particular Quoting Market Participant, or ITS Exchange, and shall also include Preferred Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean [for Nasdaq listed securities] an order

that when delivered [to a Quoting Market Participant] imposes no obligation to respond to such order under the Firm Quote Rule. [For ITS Securities,] [o]Only orders preferenced to an ITS exchange can be non-liability orders.

(r) The term ["Nasdaq Market Center," or] "system" shall mean the automated system for order execution and trade reporting in eligible securities[owned and operated by The Nasdaq Stock Market, Inc. The Nasdaq Market Center], which comprises:

(1) an order execution service that enables [Nasdaq Market Center] Participants to execute transactions in active [Nasdaq Market Center] securities; and provides [Nasdaq Market Center] Participants with sufficient monitoring and updating capability to participate in an automated execution environment; and

(2) a trade reporting service that, among other things, provides for the reporting of transactions in eligible securities; compares trade information entered by [Nasdaq Market Center] Participants and submits "locked-in" trades for clearing to the National Securities Clearing Corporation (NSCC) for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment[;].

[(3) for Nasdaq listed securities, a quotation montage that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MPIDs for each Nasdaq Market Maker, Nasdaq ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size)

next to the related MPID;]

[(4) for Nasdaq listed securities, an order display service that displays, without attribution to a particular Quoting Market Participant's MPID, the five best price levels in the Nasdaq Market Center on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.]

(s) The term "[Nasdaq Market Center] eligible securities" shall mean [designated Nasdaq-listed equity securities and ]ITS Securities as that term is defined in NASD Rule 5210(c)[.].

(t) Reserved [The term "Nasdaq ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the Nasdaq Market Center with respect to one or more Nasdaq listed securities.]

[(1) The term "Nasdaq Auto-Ex ECN" shall mean a Nasdaq ECN that participates in the automatic-execution functionality of the Nasdaq Market Center system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active Nasdaq listed security at the Nasdaq inside bid and/or offer price. ]

[(2) The term "Nasdaq Order-Delivery ECN" shall mean a Nasdaq ECN that participates in the order-delivery functionality of the Nasdaq Market Center system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active Nasdaq

listed security at the Nasdaq inside bid and/or offer price.]

(u) Reserved [The term "Nasdaq Market Maker" with respect to participation in the Nasdaq Market Center system shall mean a member of the Association that is registered as a Nasdaq Market Maker for purposes of participation in the Nasdaq Market Center with respect to one or more Nasdaq listed securities, and is currently active in the Nasdaq Market Center and obligated to execute orders through the automatic-execution functionality of the Nasdaq Market Center system for the purchase or sale of an active Nasdaq listed security at the Nasdaq inside bid and/or offer price.]

(v) The term "[Nasdaq Market Center] Participant" shall mean [a Nasdaq Market Maker, Nasdaq ECN, UTP Exchange,] an ITS/CAES Market Maker[,], or Order Entry Firm registered as such with the Association for participation in the [Nasdaq Market Center] system.

(w) The term "Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of entering orders in active [Nasdaq Market Center] securities into the [Nasdaq Market Center]system. [This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. Order Entry Firms shall not charge any fee to a broker-dealer that accesses the Order Entry Firm's quote/order through the Nasdaq Market Center.]

(x) Reserved

(y) The term "[Nasdaq] Quoting Market Participant" shall include only [the following: (1) Nasdaq Market Makers; (2) Nasdaq ECNs and (3)] ITS/CAES Market Makers.

(z) No Change.

(aa) The term "Preferred Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the Preferred Order is the next in line to be executed or delivered. Preferred Orders shall be executed subject to the conditions set out in Rule 4710(b). [Preferred Orders shall not be eligible for routing as set out in Rule 4714.]

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to the [Nasdaq Market Center]system by a [Nasdaq] Quoting Market Participant [or, for Nasdaq securities, Order Entry Firm] that is displayed in the form of a single quotation. [For ITS Securities,] [o]Orders entered by Order Entry Firms are not displayed. [Unless specifically referring to a UTP Exchange's agency Quote/Order (as set out in Rule 4710(e)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.]

(cc) Reserved [The term "Quoting Market Participant" shall include any of the following: (1) Nasdaq Market Makers; (2) Nasdaq ECNs; (3) UTP Exchange Specialists, and ITS/CAES Market Makers.]

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a [Nasdaq] Quoting Market Participant [or Order Entry Firm] to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is reduced by executions to less than a normal unit of trading.

(ee) Reserved

(ff) Reserved [The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the Nasdaq Market Center and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").]

(gg) Reserved [The term "Legacy Quote" shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the Nasdaq Market Center.]

(hh) The term "Day" shall mean, for orders so designated, that if after entry into the [Nasdaq Market Center]system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned to the entering party.

(ii) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into [Nasdaq Market Center]system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(jj) Reserved [The term "End-of-Day" shall mean, for orders so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display

until market close (4:00 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party. End-of-Day orders shall not be available for ITS Securities.]

(kk) Reserved [The term "Auto-Ex" shall mean, for orders in Nasdaq listed securities so designated, an order that (except when it is displayed or interacts with a displayed Discretionary Order at a price in its discretionary price range) will execute solely against the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center. An Auto-Ex Order may be designated as "Immediate or Cancel" (an "IOC Auto-Ex Order") or "Day" or "GTC" (a "Postable Auto-Ex Order"). A party entering a Postable Auto-Ex Order may (but is not required to) specify that the order will utilize the functionality associated with Pegged Orders or Discretionary Orders. Auto-Ex orders shall not be eligible for routing as set out in Rule 4714.]

(ll) The term "Fill or Return" shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by [Nasdaq Market Center] Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges. [Fill or Return orders shall not be eligible for routing as set out in Rule 4714.]

(mm) Reserved [The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the Nasdaq Market Center, the price of the order is automatically adjusted by the Nasdaq Market Center in response to changes in either the Nasdaq Market



Center inside bid or offer or the national best bid or offer, as appropriate. A Nasdaq Market Center Participant may enter either a Regular Pegged Order or a Reverse Pegged Order. A Nasdaq Market Center Participant entering a Regular Pegged Order may specify that the price of the order will deviate from either the Nasdaq inside quote on the same side of the market or the national best bid or offer on the same side of the market by an offset amount of \$0 to \$0.99. A Nasdaq Market Center Participant entering a Reverse Pegged Order may specify that the price of the order will deviate from either the Nasdaq inside quote on the contra side of the market or the national best bid or offer on the contra side of the market by an offset amount of \$0.01 to \$0.99. The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be permanently converted into an unpegged limit order. Pegged Orders shall not be available for ITS Securities. Pegged orders shall not be eligible for routing as set out in Rule 4714.]

(nn) The term "Discretionary" shall mean,

[ (1) for priced limit orders in Nasdaq listed securities so designated, an order that when entered into the Nasdaq Market Center has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to deviate from the Nasdaq inside quote or the national best bid or offer on the same side of the market by an offset amount of \$0 to \$0.99. The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted

to follow the pegged displayed price. Discretionary Orders for Nasdaq listed securities shall be eligible for routing as set out in Rule 4714.]

[(2) ] for orders in [ITS] eligible [S] securities so designated, an order that when entered into the [Nasdaq Market Center] system has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an [ITS] eligible [S] security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order. [Discretionary Orders for ITS Securities shall not be eligible for routing as set out in Rule 4714.]

(oo) The term "Summary" shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by the [Nasdaq Market Center] system, it shall be rejected and returned to the entering party.

(pp) The term "ITS/CAES Market Maker" shall mean a member of the Association that is registered as an ITS/CAES Market Maker as defined in NASD Rule 5210(e) or as a CQS Market Maker as defined in NASD Rule 6320 for purposes of participation in the [Nasdaq Market Center] system with respect to one or more [ITS] eligible [S] securities, and is currently active in the [Nasdaq Market Center] system. ITS/CAES Market Makers shall be permitted to execute orders in [ITS] eligible [S] securities through the automatic execution or order delivery functionality of the [Nasdaq Market Center] system for the purchase or sale of active [ITS S] securities.

(qq) The term "ITS Exchange" shall mean a national securities exchange that participates in the ITS system as defined in Rule 5210[(a)]. ITS Exchanges shall not be eligible to participate in the [Nasdaq Market Center]system. ITS Commitments sent by ITS Exchanges shall be processed by the system in accordance with the ITS Plan and all applicable NASD rules governing the participation in ITS. Quotes/Orders that are eligible for ITS will be processed by the system and delivered to the appropriate ITS Exchange as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable NASD rules.

(rr) The term "Sweep Order" shall mean, for orders [in ITS Securities] so designated, an order that may be delivered to or executed by [Nasdaq Market Center] Quoting Market Participants at multiple price levels. [Sweep Orders shall not be eligible for routing as set out in Rule 4714.]

(ss) The term "Total Day" or "X Order" shall mean,

(a) F]for orders [in ITS Securities] so designated, that if after entry into the [Nasdaq Market Center]system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., after which it shall be returned to the entering party.

(b) For orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4:00 p.m. and for execution between 8:00 a.m. and 4:00 p.m., after which it

shall be returned to the entering party.]

(tt) The term "Total Good-till-Cancelled" or "GTX Order" shall mean,

[(a)] for orders [in ITS Securities] so designated, that if after entry into the [Nasdaq Market Center]system, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

[(b)] for orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4:00 p.m. and for execution between 8:00 a.m. and 4:00 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.]

(uu) The term "Total Immediate or Cancel" or "IOX Order" shall mean[,]

[(a)] F]for limit orders [in ITS Securities] so designated, that if after entry into the [Nasdaq Market Center]system a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders are available for potential execution between 9:30 a.m. and 6:30 p.m.

[(b)] For limit orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be

canceled and returned to the entering participant. Such orders may be entered and are available for potential execution between 8:00 a.m. and 4:00 p.m.]

[(vv) The term “Proactive” shall mean, for priced limit orders so designated, that if marketable upon entry into the Nasdaq Market Center, the order will first attempt to execute in the Nasdaq Market Center and thereafter be sent to available external execution venues until it is fully executed or no longer marketable. The order will thereafter be added to the Nasdaq Market Center Book. Once on the book, if another accessible execution venue displays an order that locks or crosses the Proactive Limit Order, the order will be removed from the Nasdaq Market Center book and routed to that locking or crossing execution venue for potential execution.]

**[4703. Nasdaq Halt Cross]**

[(a) Definitions.]

[For the purposes of this rule the term:]

[(1) "Imbalance" shall mean the number of shares of Eligible Interest that cannot be matched with other order shares at a particular price at any given time. ]

[(2) The Order Imbalance Indicator shall disseminate the Inside Match Price, Near Indicative Clearing Price, and Far Indicative Clearing Price, which are all identical and are defined as follows:]

[(A) The single price at which the maximum number of shares of Eligible Interest can be paired.]

[(B) If more than one price exists under subparagraph A above, the Inside Match Price shall mean the price that minimizes any Imbalance and

does not leave unexecuted any shares at a superior price.]

[(C) If more than one price exists under subparagraph B above, the Inside Match Price shall mean:]

[ (i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;]

[ (ii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and]

[ (iii) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price as described in Rule 4709(c)(4).]

[(3) "Nasdaq Halt Cross" shall mean the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.]

[(4) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which that Eligible Interest would execute at the time of dissemination.]

[(5) "Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of X, IOX, GTX, IOC, DAY, or GTC, provided that it is available for automatic execution.]

[(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt initiated pursuant to Rule 4120(a)(1), (4), (5), (6) or (7), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and regular hours trading shall commence when the Nasdaq Halt Cross concludes.]

[(1) At the beginning of the Quotation Only Period and continuing through the resumption of trading, Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds. The Order Imbalance Indicator shall contain the following real time information:]

[(A) the Inside Match Price;]

[(B) the number of shares of Eligible Interest that are paired at the Inside Match Price;]

[(C) the size of any Imbalance;]

[(D) the buy/sell direction of any Imbalance; and]

[(E) indicative prices at which the Nasdaq Halt Cross would occur if the Nasdaq Halt Cross were to occur at that time. The indicative prices shall be:]

[(i) The Far Indicative Clearing Price,]

[(ii) The Near Indicative Clearing Price; and]

[(iii) If no price satisfies subparagraph (i) or (ii) above, Nasdaq shall disseminate an indicator for "market buy" or "market sell".]

[(2) (A) The Nasdaq Halt Cross shall occur at the price that maximizes the

number of shares of Eligible Interest in the Nasdaq Market Center to be executed.]

[(B) If more than one price exists under subparagraph (A), the Nasdaq Halt Cross shall occur at the price that minimizes any Imbalance and does not leave unexecuted any shares at a superior price.]

[(C) If more than one price exists under subparagraph (B), the Nasdaq Halt Cross shall occur at:]

[(i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;]

[(ii) In the case of a halt other than an IPO in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and]

[(iii) In the case of a halt other than an IPO in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price as described in Rule 4709(c)(4).]

[(3) If the Nasdaq Halt Cross price is selected and fewer than all shares of Eligible Interest that are available for automatic execution in the Nasdaq Market Center would be executed, all Eligible Interest shall be executed at the Nasdaq Halt Cross price in price/time priority with all displayed interest and then all reserve interest at each price level being executed.]

[(4) All Eligible Interest executed in the Nasdaq Halt Cross shall be executed



at the Nasdaq Halt Cross price, trade reported with SIZE as the contra party, and disseminated via a national market system plan. If the Nasdaq Halt Cross is the first Nasdaq execution of the trading day in a security, the Nasdaq Halt Cross price shall be the Nasdaq Official Opening Price as described in Rule 4704(d)(4).]

[(c) Nasdaq-listed securities that are the subject of a trading halt initiated pursuant to Rule 4120(a) and in which no Halt Cross occurs, shall open for trading at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:]

[(1) Limit priced orders whose limit price does not lock or cross the book shall be added to the book in time priority and limit priced orders whose limit price does lock or cross the book shall be held in queue in time priority along with IOC, IOX and market orders.]

[(2) In Queue Orders shall then be executed in strict time priority against the best bid (ask) if the in queue order is a buy (sell) order. Non-marketable IOC and IOX orders shall be cancelled and non-marketable orders of Eligible Interest shall be added to the book in strict time priority.]

[(3) When all in queue orders have been processed, the system shall resume processing for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).]

[(4) The Nasdaq Official Opening Price for such securities shall be the first Nasdaq Market Center execution following trade resumption unless the security has already traded during normal market hours on that trading day.]

**[4704. Opening Process For Nasdaq-Listed Securities]**

[(a) **Definitions.** For the purposes of this rule the term:]

[(1) "Imbalance" shall mean the number of shares of buy or sell MOO, LOO or Early Regular Hours orders that may not be matched with other MOO, LOO, Early Regular Hours or OIO order shares at a particular price at any given time.]

[(2) The Order Imbalance Indicator shall disseminate three prices, defined as follows:]

[(A) "Inside Match Price" shall mean:]

[(i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO and Early Regular Hours orders can be paired.]

[(ii) If more than one price exists under subparagraph a, the Inside Match Price shall mean the price that minimizes any Imbalance.]

[(iii) If more than one price exists under subparagraph b, the Inside Match Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.]

[(B) "Near Clearing Price" shall mean the price at which both the MOO, LOO, OIO, and Early Regular Hours orders and all executable quotes and orders in the Nasdaq Market Center (excluding volume that is available only by order delivery) would execute.]

[(C) "Far Clearing Price" shall mean the price at which the MOO, LOO, OIO, and Early Regular Hours orders in the Nasdaq Opening Book would execute.]

[(3) (A) "Limit On Open Order" or "LOO" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Opening Cross. LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution. LOO orders may be entered, cancelled and corrected between 7:30 a.m. and 9:28 a.m. without restriction.]

[(B) LOO orders entered after 9:28 a.m. shall be price validated as follows: ]

[(i) In the case of a sell imbalance, sell orders shall be priced no lower than the Near Clearing Price or they shall be rejected. Buy orders shall be priced no higher than the Inside Match Price or they shall be rejected.]

[(ii) In the case of a buy imbalance, buy orders shall be priced no higher than the Near Clearing Price or they shall be rejected. Sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.]

[(iii) If there is no imbalance, buy orders shall be priced no higher than the Inside Match Price and sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.]

[(C) After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available. Modifications to improve the price or number of shares of an existing LOO order shall pass the price validation in Rule 4704 (a)(2)(b) or the modification shall be rejected.]

[(D) LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution.]

[(E) LOO orders may not be cancelled or corrected after 9:28. After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available.]

[(4) "Market on Open Order" or "MOO" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Opening Cross. MOO orders may be entered, cancelled, and corrected between 7:30 a.m. and 9:28 a.m. and shall execute only at the price determined by the Nasdaq Opening Cross. All MOO orders shall be available for automatic execution.]

[(5) "Nasdaq Opening Cross" shall mean the process for determining the price at which orders shall be executed at the open and for executing those orders.]

[(6) "Opening Imbalance Only Order" or "OIO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Opening Cross and only against MOO, LOO or Regular Hours orders. OIO orders may be entered between 7:30 a.m. and 9:29:59 p.m., but they may not be cancelled or modified after 9:28 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. OIO sell (buy) orders shall only execute at or above (below)

the 9:30 Nasdaq Market Center offer (bid). All OIO orders shall be available for automatic execution.]

[(7) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOO, LOO, OIO, and Early Regular Hours orders and the price at which those orders would execute at the time of dissemination.]

[(8) "Regular Hours Orders" shall mean any order that may be entered into the system and designated with a time-in-force of IOC, DAY, or GTC. Regular Hours Orders shall be available for execution only during the opening and then during normal trading hours. Regular Hours Orders shall be designated as "Early Regular Hours Orders" if entered into the system prior to 9:28 a.m. and designated as "Late Regular Hours Orders" if entered into the system at 9:28 a.m. or after. Beginning at 9:28 a.m., requests to cancel or modify Regular Hours Orders shall be suspended until after completion of the Opening Cross at which time such requests shall be processed, to the extent that such orders remain available within the system.]

[(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders in Nasdaq-listed securities at 8:00 a.m. in the following manner to prevent the creation of locked/crossed markets.]

[(1) At 8:00 a.m., the system shall open in time priority all eligible Quotes as stated in paragraph (5) below and all eligible Orders in accordance with Rule 4701(ss), (tt) and (uu). Quotes/Orders whose limit price would not lock or cross the book shall be added to the book in strict time priority. Quotes/Orders whose limit

price would lock or cross the book shall be placed in an "In Queue" state except as provided in paragraph (4).]

[(2) Next, the system shall begin processing the In Queue Quotes/Orders in strict time priority against the best bid (ask) if the In Queue Quote/Order is a sell (buy) order. If an In Queue Quote/Order is not executable when it is next in time for execution, the system shall automatically add that Quote/Order to the book.]

[(3) Once the process set forth in subparagraphs (1)–(2) is complete, the system shall begin processing Quotes and X, GTX and IOX Orders in accordance with their entry parameters.]

[(4) Between 8:00 a.m. and 9:25 a.m., the system shall open Quotes in accordance with the entry parameters set by each Nasdaq Quoting Market Participant provided that Quotes that would lock/cross the market will be rejected or executed in accordance with the Nasdaq Quoting Market Participant's instructions. At 9:25 a.m., the system shall open all remaining unopened Quotes in accordance with each firm's instructions.]

[(5) Nasdaq Quoting Market Participants may instruct Nasdaq to open their Quotes as follows: ]

[(A) At the last price and size entered by the participant during the previous trading day, either including or excluding reserve size;]

[(B) At a price and size entered by the participant between 7:30 a.m. and 9:24:59 a.m.; or]

[(C) At the quotation limits for Nasdaq systems, currently \$.01 (bid)

and \$2,000 (ask).]

[(6) All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier.]

[(7) Notwithstanding subparagraphs (1) through (5), if a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described above, the system shall, before sending the order to any other Quoting Market Participant or Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in subparagraphs (1) through (3), unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710(b)(1)(B)(ii)(a).]

[(c) Nasdaq-listed securities in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. in the following manner:]

[(1) At 9:30 the system shall suspend processing as set forth in paragraph (b) in order to open and integrate Regular Hours orders into the book in time priority.]

[(2) Limit priced Regular Hours Orders whose limit price does not lock or cross the book shall be added to the book in time priority and limit priced Regular Hours Orders whose limit price does lock or cross the book shall be held In Queue in

time priority along with IOC and Regular Hours market orders.]

[(3) In Queue Orders shall then be executed in strict time priority against the best bid (ask) if the In Queue order is a buy (sell) order. Non-marketable IOC orders shall be cancelled and non-marketable Regular Hours Orders shall be added to the book.]

[(4) When all In Queue orders have been processed, the system shall resume processing for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).]

[(d) Processing of Nasdaq Opening Cross. For certain Nasdaq-listed securities designated by Nasdaq, the Nasdaq Opening Cross shall occur at 9:30, and regular hours trading shall commence when the Nasdaq Opening Cross concludes.]

[(1) Beginning at 9:25:30 a.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 15 seconds until 9:28:20, and then every 5 seconds until market open. The Order Imbalance Indicator shall contain the following real time information:]

[(A) the Inside Match Price;]

[(B) the number of shares represented by MOO, LOO, OIO, and Early Regular Hours orders that are paired at the Inside Match Price;]

[(C) the size of any Imbalance;]

[(D) the buy/sell direction of any Imbalance; and]

[(E) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent



by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be: ]

[ (i) The Far Clearing Price, and]

[ (ii) The Near Clearing Price.]

[ (iii) If no price satisfies subparagraph (i) or (ii) above, Nasdaq shall disseminate an indicator for "market buy" or "market sell".]

[(2) (A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of MOO, LOO, OIO, Early Regular Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.]

[(B) If more than one price exists under subparagraph (A), the Nasdaq Opening Cross shall occur at the price that minimizes any Imbalance.]

[(C) If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.]

[(D) If the Nasdaq Opening Cross price established by subparagraphs (A) through (C) is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Opening Cross shall occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C). Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.]

[(3) If the Nasdaq Opening Cross price is selected and fewer than all MOO, LOO, OIO and Regular Hours Orders that are available for automatic execution in the Nasdaq Market Center would be executed, all Quotes/Orders shall be executed at the Nasdaq Opening Cross price in the following priority:]

[(A) MOO and Early Regular Hours market orders, with time as the secondary priority;]

[(B) LOO orders, Early Regular Hours limit orders, OIO orders, X limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price with time as the secondary priority;]

[(C) LOO orders, OIO Orders, displayed interest of Early Regular Hours and X limit orders, and displayed interest of quotes at the Nasdaq Opening Cross price with time as the secondary priority;]

[(D) Reserve interest of quotes and Early Regular Hours and X limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and]

[(E) Eligible Late Regular Hours orders in strict time priority.

Unexecuted MOO, LOO, and OIO orders shall be canceled. ]

[(4) All Quotes/Orders executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported with SIZE as the contra party, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Opening Cross.]

**4705. [Nasdaq Market Center ]Participant Registration**

[(a) Participation in the Nasdaq Market Center as a Nasdaq Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the Nasdaq Market Maker's initial and continuing compliance with the following requirements:]

[(1) execution of a Nasdaq Market Center Participant application agreement with the Association; ]

[(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which Nasdaq Market Center compared trades may be settled; ]

[(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and 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 Market Maker to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Nasdaq Market Center; and]

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

[(b) Pursuant to Rule 4611(e), participation in the Nasdaq Market Center is required for any Nasdaq Market Maker registered to make a market in a Nasdaq listed security.]

[(c)](a) Participation in the [Nasdaq Market Center] system 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 Market Center Participant application] an applicable agreement with the Association;
- (2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which [Nasdaq Market Center] system compared trades may be settled;
- (3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;
- (4) maintenance of the physical security of the equipment located on the premises of the Order Entry Firm to prevent the improper use or access to [Nasdaq] the system[s], including unauthorized entry of information into the [Nasdaq Market Center] system; and
- (5) acceptance and settlement of each [Nasdaq Market Center] trade that the [Nasdaq Market Center] system identifies as having been effected by such Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified [Nasdaq Market Center] trade by the clearing member on the regularly scheduled settlement date.

[(d) Participation in the Nasdaq Market Center as a Nasdaq ECN requires current registration as an NASD member and shall be conditioned upon the following:]

[(1) the execution of a Nasdaq Market Center Participant application agreement with the Association; ]

[(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;]

[(3) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which Nasdaq Market Center compared trades may be settled;]

[(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Nasdaq Market Center; and ]

[(5) acceptance and settlement of each trade that is executed through the facilities of the Nasdaq Market Center, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Nasdaq Market Center trade by the clearing member on the regularly scheduled settlement date.]

[(e)](b) Participation in the [Nasdaq Market Center]system as an ITS/CAES Market Maker shall be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.

[(f)](c) The registration required hereunder will apply solely to the qualification of a [Nasdaq Market Center] Participant to participate in the [Nasdaq Market Center]system. Such registration shall not be conditioned upon registration in any particular eligible or active [Nasdaq Market Center] securities.

[(g)](d) Each [Nasdaq Market Center] Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

[(h)](e) [Nasdaq]NASD may impose upon any [Nasdaq Market Center] Participant such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as [Nasdaq]NASD may determine to be necessary to protect the integrity of [Nasdaq's]NASD systems. For example, such temporary restrictions may be necessary to address a system problem at a particular [Nasdaq Market Center] Participant or at [Nasdaq]NASD, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to affected [Nasdaq Market Center] Participants in writing.

[(i)](f) [Except as provided for in paragraph (j) below, t]The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the [Nasdaq Market Center]system or its use. Any losses, damages, or other claims, related to a failure of the [Nasdaq Market Center]system to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the [Nasdaq Market Center]system shall be absorbed by the member, or the member sponsoring the

customer, that entered the order, Quote/Order, message, or other data into the [Nasdaq Market Center] system.

[(j) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center or Nasdaq's Brut order execution system for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center, or Brut system, as applicable, has acknowledged receipt of the order, Quote/Order, message, or data.]

[(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of \$100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.]

[(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.]

[(3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system during a single calendar month, Nasdaq's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.]

[(4) In the event all of the claims arising out of the use of the Nasdaq Market Center or Brut system cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum

amount will be proportionally allocated among all such claims arising on a single trading day, or during a single calendar month, as applicable.]

[(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Nasdaq Market Center or the Brut system gave rise to the such claims. Nothing in this rule shall obligate Nasdaq or Brut to seek recovery under any applicable insurance policy.]

#### **4706. Order Entry Parameters**

##### **(a) Non-Directed Orders —**

(1) General. The following requirements shall apply to Non-Directed Orders [E]ntered by [Nasdaq Market Center] Participants:

(A) A [Nasdaq Market Center] Participant may enter into the [Nasdaq Market Center] system a Non-Directed Order in order to access the best bid/best offer as displayed in [Nasdaq] the system. [and other markets as set out in Rule 4714.]

(B) A Non-Directed Order must be a market or limit order, must indicate [whether it should be not routed to another market in accordance with Rule 4714,] whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", "Day", "Good-till-Cancelled", ["Auto-Ex",] "Fill or Return", ["Pegged",] "Discretionary", "Sweep", "Total Day", "Total Good till Cancelled", "Total Immediate or Cancel", or "Summary"[, or "Proactive"].



(i) If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(ii) If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by the [Nasdaq Market Center]system and remain available for potential display/execution until it is cancelled by the entering party, or until 4:00 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(iii) If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by the [Nasdaq Market Center]system and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(iv) Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day Non-Directed Orders may be entered into the [Nasdaq Market Center]system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market

open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time.

[(v) For Nasdaq listed securities, an order may be designated as "Auto-Ex," in which case the order may be designated as IOC, Day or GTC. If a Nasdaq Market Center Participant entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with Pegged or Discretionary Orders, the order will automatically be designated as Day.]

[(vi)](v) [For ITS Securities, a]An order may be designated as "Fill or Return," in which case it shall be executed solely against the Quotes/Orders of [Nasdaq Market Center] Participants at the best bid/best offer within the [Nasdaq Market Center]system. The [Nasdaq Market Center]system will, if necessary, execute against interest at successive price levels. A Fill or Return Order will not trade through the quotation of an ITS Exchange.

[(vii) An order may be designated as "Pegged," in which case the order will also automatically be designated as Day. A Pegged Order may not be designated as a Preferred Order. A Pegged Order (or unexecuted portion thereof) will be retained by the Nasdaq Market Center and its price adjusted in response to changes in the Nasdaq Market Center inside market or the national best bid or offer, as appropriate. A Pegged Order (including any other order type with a

price that is pegged) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4:00 p.m. market close, Pegged Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of any type of order with a price that is pegged entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer or the national best bid or offer at that time, as appropriate. Pegged Orders shall not be available for ITS Securities.]

[To maintain the capacity and performance of the Nasdaq Market Center, Nasdaq may at any time suspend the entry of all types of orders with prices that are pegged for all securities or for any security. Pegged Orders that are in the Nasdaq Market Center at the time of such suspension will continue to be available for adjustment and execution.]

[(viii)](vi) a. An order may be designated as "Discretionary", in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferred Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system

also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. [If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market or the national best bid or offer, as appropriate.] Starting at 7:30 a.m., until the 4:00 p.m. market close, Discretionary Orders may be entered into the [Nasdaq Market Center]system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the [Nasdaq Market Center]system at market open.

b. A Discretionary Order in an [ITS]eligible [S]security may not be preferenced to an ITS/CAES Market Maker or ITS Exchange, shall not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is also designated as a Sweep Order. Starting at 7:30 a.m., until

the 4:00 p.m. market close, Discretionary Orders in ITS Securities may be entered into the [Nasdaq Market Center]system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time.

Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the [Nasdaq Market Center]system at market open.

[(ix)](vii) An order [in an ITS Security] may be designated as a "Sweep Order." A Sweep Order may be entered only by an ITS/CAES Market Maker. A Sweep Order may trade through the quotations of ITS Exchanges, and it will be delivered to or executed only by [Nasdaq Market Center]Quoting Market Participants at multiple price levels.

[(x)](viii) An order [in an ITS Security] may be designated as "Total Day" ("X") and may be entered between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m. If a priced X order is not immediately executable, the unexecuted order (or portion thereof) shall be retained

by the [Nasdaq Market Center]system and remain available for potential display/execution until it is cancelled by the entering party, or until 6:30 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

~~[(xi)]~~(ix) An order [in an ITS Security] may be designated as "Total Good-till-Cancelled" ("GTX"). A GTX order (or unexecuted portion thereof) shall be retained by the [Nasdaq Market Center]system and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m.

~~[(xii)]~~(x) An order [in an ITS Security] may be designated as "Total Immediate or Cancel" ("IOX"). IOX orders may be entered beginning at 7:30 a.m. until 6:30 p.m. and are available for potential execution throughout the trading day beginning at 9:30 a.m. If a priced order designated as IOX and entered prior to 9:30 a.m. is not immediately executable at 9:30 a.m., the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as IOX and entered between 9:30 a.m. and 6:30 p.m. is not immediately executable, the unexecuted order (or portion thereof) shall be returned

to the sender.

[(xiii)](xi) An order may be designated as "Summary," in which case the order shall be designated either as Day or GTC. A Summary Order that is marketable upon receipt by the [Nasdaq Market Center]system shall be rejected and returned to the entering party. If not marketable upon receipt by the [Nasdaq Market Center]system, it will be retained by the system.

[(xiv) A limit order may be designated as "Proactive," in which case the order shall be designated as Day, GTC, X, or GTX. A Proactive Order that is marketable upon entry into the Nasdaq Market Center will first attempt to execute in the Nasdaq Market Center and thereafter be sent to available external execution venues until it is fully executed or no longer marketable. The order will thereafter be added to the Nasdaq Market Center book. Once on the book, if another accessible execution venue displays an order that locks or crosses the Proactive Limit Order, the order will be removed from the Nasdaq Market Center book and routed to that locking or crossing execution venue for potential execution.]

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate SEC Rule 10a-1, in the case of ITS Securities. Non-Directed Orders to sell short shall not be executed in the Nasdaq Market Center if the execution of such order would violate NASD

Rule 3350. Non-Directed Orders to sell short that cannot be executed in the Nasdaq Market Center and that have elected to be routed to other markets as set out in Rule 4714 shall be routed to another market and processed in accordance with the short sale restrictions in effect at the destination market.]

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The [Nasdaq Market Center]system shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(F) A [Nasdaq Market Center ]Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel, limit orders designated as Total Immediate or Cancel, [Auto-Ex Orders,] and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed shall be held in a time-priority queue that will begin to be processed by the [Nasdaq Market Center]system at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by the [Nasdaq Market Center]system for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by Order Entry Firms — In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to



Non-Directed Orders entered by Order Entry Firms:

(A) (i) All Non-Directed orders in Nasdaq listed securities shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. Order Entry Firms may designate orders as "Pegged" or "Discretionary," in which case the order will also automatically be designated as Day. Order Entry Firms may also designate orders as "Auto-Ex," in which case the order may be designated as IOC, Day or GTC. If an Order Entry Firm entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with Pegged or Discretionary Orders, the order will automatically be designated as Day. For IOC orders, if after entry into the Nasdaq Market Center of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant]

[(ii) In ITS Securities, a] All Non-Directed orders [shall be designated as Immediate or Cancel, GTC, Day, Total Immediate or Cancel, Total Day, or Total GTC but shall be required to be entered as Non-attributable if not entered as IOC or IOX.] entered by Order Entry Firms shall be designated as [may only assign the] IOC, IOX, and Fill or Return and Discretionary order [designations] as described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the

[Nasdaq Market Center]system of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. Limit and market orders designated as Immediate or Cancel or[, in the case of ITS Securities,] IOX[, Auto-Ex Orders, and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed] will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC or[, in the case of ITS Securities,] IOX, and that is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b) Reserved

(c) Entry of Agency and Principal Orders— [Nasdaq Market Center] Participants are permitted to enter into the [Nasdaq Market Center]system both agency and principal orders for delivery and execution processing.

(d) Order Size —

[(1) Any order in whole shares up to 999,999 shares may be entered into the Nasdaq Market Center for normal execution processing.]

[(2)] Orders in [ITS ]eligible [S]securities will be delivered to ITS Exchanges in round lots only.

(e) Open Quotes — The [Nasdaq Market Center]system will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

**4707. Entry and Display of Quotes/Orders**

(a) Entry of Quotes/Orders — [Nasdaq] Quoting Market Participants may enter Quotes/Orders into the [Nasdaq Market Center]system, and Order Entry Firms may enter Non-Attributable Orders into the [Nasdaq Market Center]system, subject to the following requirements and conditions:

(1) [Nasdaq] Quoting Market Participants shall be permitted to transmit to the [Nasdaq Market Center]system multiple Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable). Order Entry Firms shall be permitted to transmit to the [Nasdaq Market Center]system multiple Non-Attributable [Quotes/]Orders at a single as well as multiple price levels and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the [Nasdaq Market Center]system shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule[s] 4710(b) [and 4714]. For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. [When any type of order with a price that is pegged is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.]

(3) [Consistent with Rule 4613, a Nasdaq] An ITS/CAES Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) [Nasdaq] Quoting Market Participants may continue to transmit to the [Nasdaq Market Center] system only their best bid and best offer Attributable Quotes/Orders. [Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, n] Nothing in these rules shall require a [Nasdaq] Quoting Market Participant to transmit to the [Nasdaq Market Center] system multiple Quotes/Orders.

(b) [Display of Quotes/Orders in Nasdaq — The Nasdaq Market Center will display Quotes/Orders submitted to the system as follows:]

[(1) Attributable Quotes/Orders — The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the system under the Nasdaq Quoting Market Participant's MPID, and also will be displayed in the order display service of the Nasdaq Market Center as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(r) on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the Nasdaq Market Center will automatically display the participant's next best Attributable Quote/Order on that side of the market.]

[(2) Non-Attributable Quotes/Orders — The price and size of a Nasdaq

Quoting Market Participant's and Order Entry Firm's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the order display service of the Nasdaq Market Center as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(r) on either side of the market. A Non-Attributable Quote/Order will not be displayed under the Nasdaq Quoting Market Participant's MPID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed under an anonymous MPID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's or Order Entry Firm's Non-Attributable Quote/Order, the Nasdaq Market Center will automatically display a Non-Attributable Quote/Order in the order display service of the Nasdaq Market Center (consistent with the parameters described above) if it falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(r) on either side of the market.]

[(3) Exceptions — The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:]

[(A) Odd-lots, Mixed Lots, and Rounding — The Nasdaq Market Center (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, the Nasdaq Market Center will aggregate all shares, including odd-lot share amounts,

entered by a Quoting Market Participant and Order Entry Firm at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quote/Order that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.]

[(B) Aggregation and Display of Odd-lots Bettering the Inside Price - Except as provided in Subsection (C) below, odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE MPID, with the odd-lot share amounts of other Quoting Market Participants and Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.]

[(C) In the case of ITS Securities, o]Odd lot share amounts of each individual ITS/CAES Market Maker shall be aggregated separately and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. An odd lot share amount will be cancelled if it represents an ITS/CAES Market Maker's best priced quote or order within the [Nasdaq Market Center]system. Odd lot share amounts will be cancelled at the end of the day.

[(D) Non-Directed Orders and Routing — Non-Directed Orders

marked for routing as set out in Rule 4714 shall not be displayed in the Nasdaq Market Center while outside the Nasdaq Market Center. Non-Directed Orders marked for routing shall be displayed in the Nasdaq Market Center as set out in Rules 4701 and 4707 while such orders are in the Nasdaq Market Center.]

(c) Reserve Size — Reserve Size shall not be displayed in [Nasdaq]the system, but shall be electronically accessible as described in Rule 4710(b).

[(d) Summary Scan — The "Summary Scan" functionality is a query-only non-dynamic functionality for Nasdaq listed securities only. It displays without attribution to Quoting Market Participants' MPIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the number of price levels authorized for aggregation and display pursuant to Rule 4701 (r).]

[(e) NQDS Prime — "NQDS Prime" is a separate data feed for Nasdaq-listed securities that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the order display service of the Nasdaq Market Center.]

[(f) IM Prime — "IM Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are



disseminated for ITS Securities in the Nasdaq Market Center.]

**4708. ITS Commitments**

**(a) Compliance with Rule 5200 Series.**

(1) Pre Opening Application. ITS/CAES Market Makers may use the [Nasdaq Market Center]system to participate in the Pre Opening Application accordance with Rules 5240 and 5250. Order Entry Firms may not participate in the Pre Opening Application.

(2) Trade throughs. ITS/CAES Market Makers must use the [Nasdaq Market Center]system to comply with the trade through obligations set forth in Rules 5262 and 5264. The [Nasdaq Market Center]system will reject any order of an Order Entry Firm that, if executed, would trade through an ITS Exchange.

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use the [Nasdaq Market Center]system to comply with the locked and crossed markets obligations set forth in Rules 5263. [Any order or portion thereof entered by an Order Entry Firm that would create a locked/crossed market with an ITS Exchange will be rejected.]

**(b) Inbound ITS Commitments**

(1) If the ITS Commitment contains an obvious error as described in Rule 5265(b), the [Nasdaq Market Center]system will decline it.

(2) If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a-1, the [Nasdaq Market Center]system will decline it.

(3) If the conditions described in subparagraphs (1) and (2) above do not

apply, the [Nasdaq Market Center]system will execute or deliver an inbound ITS Commitment in accordance with applicable provisions of the Rule 5200 Series and the ITS Plan.

**4709. [Nasdaq Closing Cross] Reserved**

[(a) Definitions. For the purposes of this rule the term:]

[(1) "Imbalance" shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at a particular price at any given time.]

[(2) "Imbalance Only Order" or "IO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 3:30 p.m. and 3:59:59 p.m., but they cannot be modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). IO orders cannot be cancelled after 3:55:00 p.m. for any reason. IO sell (buy) orders will only execute at or above (below) the 4:00:00 SuperMontage offer (bid). All IO orders must be available for automatic execution. ]

[(3) "Limit On Close Order" or "LOC" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m.

only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). LOC orders cannot be cancelled after 3:55:00 p.m. for any reason. LOC Orders will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution. ]

[(4) "Market on Close Order" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. MOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). MOC orders cannot be cancelled after 3:55:00 p.m. for any reason. MOC orders will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.]

[(5) "Nasdaq Closing Cross" shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.]

[(6) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.]

[(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then beginning at 3:55 every 15 seconds until 3:59, and then beginning at 3:59 every 5 seconds until market close. The Order Imbalance Indicator shall contain the following real time information:]

[(1) the number of shares represented by MOC, LOC, and IO orders that are paired at a single price that is at or within the current SuperMontage inside.]

[(2) the size of any Imbalance;]

[(3) the buy/sell direction of any Imbalance; and ]

[(4) indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current SuperMontage best bid or best offer, whichever is closer. The indicative prices will be:]

[(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and]

[(B) The price at which both the MOC, LOC, and IO orders and all executable orders in SuperMontage (excluding volume that is available only by order delivery) would execute.]

[(C) If no price satisfies subparagraph (A) or (A) and (B) above, Nasdaq will disseminate the phrase "market buy" or "market sell".]

**[(c) Processing of Nasdaq Closing Cross.]**

[(1) The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.]

[(2) The Nasdaq Closing Cross will occur at the price that ]

[(A) maximizes the number of shares executed. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that: ]

[(B) minimizes any Imbalance. If more than one such price exists, the

Nasdaq Closing Cross shall occur at the price that:]

[(C) minimizes the distance from the 4:00:00 SuperMontage bid-ask midpoint.]

[(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.]

[(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in SuperMontage would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:]

[(A) MOC orders, with time as the secondary priority; ]

[(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price; ]

[(C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority; ]

[(D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and ]

[(E) Unexecuted MOC, LOC, and IO orders will be canceled.]

[(4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price, trade reported with SIZE as the contra party, and disseminated via the consolidated tape. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.]

[(5) Auxiliary Procedures. When significant trading volume is expected at the close of regular hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:]

[(i) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.]

[(ii) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.]

[(iii) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order Imbalance

Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.]

[(iv) Adjusting the threshold values set forth in subparagraph

(c)(2)(D) to no greater than 20 percent.]

**4710. Participant Obligations in the [Nasdaq Market Center] System**

**(a) Registration**

Upon the effectiveness of registration as [a Nasdaq Market Maker, Nasdaq ECN,]an ITS/CAES Market Maker or Order Entry Firm, the [Nasdaq Market Center] Participant may commence activity within [Nasdaq Market Center]the system for exposure to orders, entry of orders, or to report trades, as applicable. The operating hours of the [Nasdaq Market Center]system may be established as appropriate by the Association. The extent of participation in [Nasdaq]N<sup>ASD</sup> by an Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into [Nasdaq Market Center]the system.

**(b) Non-Directed Orders**

(1) General Provisions — A Quoting Market Participant in an [Nasdaq Market Center] eligible security[, as well as Order Entry Firms,] shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations — For each [Nasdaq Market Center] eligible security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and

Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in the [Nasdaq Market Center]system. This obligation shall also apply to the Non-Attributable Quotes[/Orders of Order Entry Firms]. Quoting Market Participants[, and Order Entry Firms,] shall participate in the [Nasdaq Market Center]system as follows:

[ (i) Nasdaq Market Makers, Nasdaq Auto-Ex ECNs, and Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the Nasdaq Market Center, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.]

[ (ii) ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the [Nasdaq Market Center]system. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size. ITS/CAES Market Makers that elect order delivery shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's Displayed Quote/Order and Reserve Size. ITS/CAES Market Maker that elect order delivery shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ITS/CAES Market Maker's



system, in which case the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

[(iii) Nasdaq Order-Delivery ECNs shall participate in the order-delivery functionality of the Nasdaq Market Center, and shall accept the delivery of an order up to the size of the Nasdaq Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The Nasdaq Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.]

[(iv) UTP Exchanges that choose to participate in the Nasdaq Market Center shall do so as described in subparagraph (f) of this rule and as otherwise described in the Nasdaq Market Center rules and the UTP Plan.]

(B) Processing of Non-Directed Orders — Upon entry of a Non-Directed Order into the system, the [Nasdaq Market Center]system will ascertain who the next Quoting Market Participant [or Order Entry Firm ]in queue to receive an order is and shall deliver an execution to Quoting Market Participants [or Order Entry Firms ]that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting

Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the [Nasdaq Market Center] system shall be delivered to or automatically executed against Quoting Market Participants' [or Order Entry Firms'] Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(1)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to the [Nasdaq Market Center] system shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in paragraphs (i)[,] and (ii) [and (iii)] below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the quotation montage of the [Nasdaq Market Center] system, remain in system and available for execution.

- (i) Execution Algorithm — Price/Time — The system will access interest in the system in the following priority and order:
  - a. Displayed Quotes/Orders of [Nasdaq Market Makers,] ITS/CAES Market Makers[, and Nasdaq ECNs, displayed Non-Attributable Quotes/Orders of Order Entry Firms, and displayed non-attributable agency Quotes/Orders of

UTP Exchanges (as permitted by subparagraph (f) of this rule),] in time priority between such participants' Quotes/Orders; and

b. Reserve Size of [Nasdaq] Quoting Market

Participants [and Order Entry Firms,] in time priority between such participants' Quotes/Orders.]; and]

[c. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.]

(ii) Exceptions — The following exceptions shall apply to the above execution parameters:

a. If a [Nasdaq] Quoting Market Participant [or Order Entry Firm] enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the [Nasdaq Market Center]system will first attempt to match off the order against the [Nasdaq] Quoting Market Participant's [or Order Entry Firm's] own [Quote/]Order if the participant is at the best bid/best offer in [Nasdaq]the system. [Nasdaq] Quoting Market Participants [and Order Entry Firms] may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I",

subject to the following restrictions:

Y — if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants [and Order Entry Firms] other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party [or route the quote/order to another market as set out in Rule 4714 if the quote/order is marked for routing]; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

I — if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the [Order Entry Firm or Nasdaq] Quoting Market Participant that entered the AIQ "I" flagged order, based on the price/time execution algorithm.

b. If a [Nasdaq Market Center] Quoting Market

Participant enters a Preferred Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferred Order shall be returned to the entering [Nasdaq Market Center] Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed), the Preferred Order shall be returned to the entering [Nasdaq Market Center] Participant.

c. If a [Nasdaq Market Center] Quoting Market Participant enters a Quote or Non-Directed Order that would result in the [Nasdaq Market Center] system either: 1) delivering an execution to a Quoting Market Participant(s) [or an Order Entry Firm ]that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside

bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting \$0.01. For example, in a stock with a current inside bid of \$10.00, the maximum price at which a single sell order could be executed would be \$8.99 calculated as follows:  $(\$10.00 - (\$10.00 \times .10 [e.g.] \equiv \$1) - \$0.01 = \$8.99)$ . For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done at a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding \$0.01. For example, in a stock with a current inside offer of \$10.00, the highest price at which a single sell order could be executed would be \$11.01 calculated as follows:  $(\$10.00 + (\$10.00 \times .10 [e.g.] \equiv \$1) + \$0.01 = \$11.01)$ . This subsection shall not apply to ITS commitments received

from ITS Exchanges or to orders based on such ITS commitments.

[d. An Auto-Ex Order in a Nasdaq listed security that is designated IOC will interact solely with the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center ("Auto-Ex Eligible Participants"). An IOC Auto-Ex Order will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An IOC Auto-Ex Order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.]

[Upon entry into the Nasdaq Market Center, a Postable Auto-Ex Order will be processed in the same manner as an IOC Auto-Ex Order; provided, however, that if the Nasdaq Market Center Participant entering the Postable Auto-Ex Order specifies that the order will utilize the functionality associated with Pegged Orders or Discretionary Orders (including pegged

Discretionary Orders), the order will be processed in the same manner as a Pegged Order or a Discretionary Order, but will interact solely with the Quotes/Orders of Auto-Ex Eligible Participants and will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. Any portion of a Postable Auto-Ex Order that cannot be immediately executed will be displayed, unless it would lock or cross the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant, in which case the Postable Auto-Ex Order (or any unexecuted portion thereof) will be cancelled.

Depending on the functionality specified by the Nasdaq Market Center Participant entering the order, a Postable Auto-Ex Order that is displayed will have the same characteristics and be subject to the same rules as a regular limit order, a Pegged Order, or a Discretionary Order.]

[For purposes of this subclause d., any displayed Discretionary Order that may be executed against (or delivered to) an Auto-Ex Order at a price in the Discretionary Order's discretionary price range will be deemed to have been entered



by an Auto-Ex Eligible Participant.]

[e.]d. If a [Nasdaq Market Center] Quoting Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of [Nasdaq Market Center] Quoting Market Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of [Nasdaq Market Center] Quoting Market Participants within the incoming Discretionary Order's discretionary price range (including displayed Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The

unexecuted portion of a Discretionary Order will then be retained by the [Nasdaq Market Center]system for potential display in conformity with Rule 4707(b). [To the extent a Discretionary Order designated for routing is not executed in full in accordance with the procedures described above upon submission to the Nasdaq Market Center the order shall be routed as set out in Rule 4714.]

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a

discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by [Nasdaq Market Center] Quoting Market Participants in the automatic execution functionality of the [Nasdaq Market Center]system, and will be delivered to Non-Directed Orders and Quotes/Orders entered by [Nasdaq]order delivery ITS/CAES Market Maker[Order-Delivery ECNs].

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

[f.]e. A Fill or Return order in an [ITS]eligible [S]security will be executed solely by the [Nasdaq Market Center]system at the best bid/best offer, without delivering the order to an ITS Exchange. The [Nasdaq Market Center]system will, if necessary, execute against interest at successive price levels.

[g. Non-Directed Orders marked for routing shall be processed in accordance with Rule 4714.]

[h.]f. If a [Nasdaq Market Center] Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the [Nasdaq Market Center] system by 10% or more it will receive a warning message rejecting the order. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a [Nasdaq Market Center] Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the [Nasdaq Market Center] system by 20% or more, the Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant. Non-Directed Orders Priced Under \$1.00: For Non-Directed Orders priced under \$1.00, such orders shall receive a rejection warning if they cross the best bid/offer in the [Nasdaq Market

Center] system by \$0.10 or more. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a [Nasdaq Market Center] Participant enters a Non-Directed Order priced under \$1.00 that, at the time of entry, would cross the best bid/offer in the [Nasdaq Market Center] system by \$0.20 or more, that Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant.

(C) Decrementation Procedures — The size of a Quote/Order displayed in the order display service and/or the quotation montage of the [Nasdaq Market Center] system will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferred Order in an amount equal to the system-delivered order or execution.

(i) [If a Nasdaq Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to the Nasdaq Market Center, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to the Nasdaq Market Center a revised Attributable Quote/Order.]

[(ii) If a Nasdaq Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if a Nasdaq Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next eligible Quote/Order in queue. The system then will zero out those ECN Quote/Orders to which the Non-Directed Order was delivered. If there are no other Quote/Orders at the declined price level, the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq Market Center a revised Attributable Quote/Order.]

[(iii) If a Nasdaq ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the Nasdaq Market Center, as described in Rule 4707 and subparagraph (b) of this rule.]

[(iv) If a Nasdaq ECN regularly fails to meet a 5-second

response time (as measured by the ECN's Service Delivery Platform if linked to the Nasdaq Market Center by an application programming interface; or as measured by timestamps generated by the Nasdaq Market Center if linked to the system by a direct connection) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the Nasdaq ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.]

[(v) ITS/CAES Market Makers]

[a. ]If an ITS/CAES Market Maker declines or partially fills a Non-Directed Order without immediately transmitting to [Nasdaq]the system a revised Attributable Quote/Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond in any manner within 5 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

[b.](ii) If the bid side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically

establish a bid of \$0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish an offer of two times the system best bid plus \$0.01 and offer for 100 shares.

[c.](iii) If an ITS/CAES Market Maker regularly fails to meet a 5-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, [Nasdaq]NASD will place that ITS/CAES Market Maker's quote in a closed-quote state. [Nasdaq]NASD will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) All entries in the [Nasdaq Market Center]system shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time [by Nasdaq].

**(2) Refresh Functionality**

[(A) Reserve Size Refresh — ]Once a [Nasdaq] Quoting Market Participant's [or Order Entry Firm's] Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to the [Nasdaq Market Center]system



processing, [Nasdaq]the system will refresh the displayed size out of Reserve Size to a size-level designated by the [Nasdaq] Quoting Market Participant [or Order Entry Firm, or in the absence of such size-level designation, to the automatic refresh size]. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the [Nasdaq] Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the [Nasdaq] Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the [Nasdaq] Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the [Nasdaq] Quoting Market Participant's [or Order Entry Firms] Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. [This functionality will not be available for use by UTP Exchanges.]

[(B) Auto Quote Refresh ("AQR") — Once a Nasdaq Market Maker's or ITS/CAES Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to Nasdaq Market Center executions,

the Nasdaq Market Maker or ITS/CAES Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:]

[ (i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to an amount less than a normal unit of trading, by a price interval designated by the Nasdaq Market Maker or ITS/CAES Market Maker; and ]

[ (ii) Nasdaq will refresh the market maker's displayed size to a level designated by the Nasdaq Market Maker or ITS/CAES Market Maker, or in the absence of such size level designation, to the automatic refresh size.]

[ (iii) This functionality shall produce an Attributable Quote/Order.]

[ (iv) The AQR functionality described in this subparagraph shall only be available for use in connection with a Nasdaq Market Maker's or ITS/CAES Market Maker's "Legacy Quote." This functionality shall be available only to Nasdaq Market Makers or ITS/CAES Market Makers.]

(3) Entry of Locking/Crossing Quotes/Orders — The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours — If during market hours, a participant enters into the [Nasdaq Market Center] system a

Quote/Order that will lock/cross the market (as defined in [NASD Rule 4613(e) or in] NASD Rule 5263(a) or (b)), the system will not display the Quote/Order as a quote in [Nasdaq]the system; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant [or Order Entry Firm] next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants [or Order Entry Firms] in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system may, if consistent with the parameters of the Quote/Order, reformat the order and display it in [Nasdaq]the system as a Quote/Order on behalf of the entering Quoting Market Participant[ or Order Entry Firm]. If an order is not eligible to be reformatted and displayed, the [Nasdaq Market Center]system will reject the remainder of the order back to the entering participant. In

ITS Securities, orders entered by Order Entry Firms are not eligible to be reformatted and displayed.

(B) Locked/Crossed Quotes/Orders in ITS Securities Immediately Before the Open — If the market in an ITS Security is locked or crossed at 9:30 a.m., Eastern Time, the [Nasdaq Market Center]system will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:55 a.m. and 9:29:59 Eastern Time, once the [Nasdaq Market Center]system has cleared a locked or crossed market, or if a newly submitted Quote/Order would create a locked or crossed market, the [Nasdaq Market Center]system will prevent a locked or crossed market from being created by holding such Quotes/Orders in queue.

(i) Exception — The following exception shall apply to the above locked/crossed processing parameters:

If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in subparagraph (B) above, the system shall, before sending the order to any other ITS/CAES Market Maker [or Order Entry Firm], first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that

participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). [Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in subparagraph (B) above, unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710(b)(1)(B)(ii)(a).]

[(4) An Nasdaq Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from the Nasdaq Market Center at any time. However, the market maker has the specific obligation to monitor its status in the Nasdaq Market Center 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 market maker.]

[(5) If a Nasdaq Market Maker's Attributable Quote/Order is reduced to less than a round-lot amount on one side of the market due to Nasdaq Market Center executions, the Nasdaq Market Center will close the Market Maker's quote in the Nasdaq Market Center on that side of the market, and the Nasdaq Market Maker will be permitted a grace period of 30 seconds within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the AQR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. A Nasdaq Market Maker that fails to transmit an

Attributable Quote/Order in a security within the allotted time will have the exhausted side of its quotation restored by the system at a price \$0.01 inferior to the lowest displayed bid price or the highest displayed offer price in that security as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced \$0.01 inferior to the lesser of either: a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, the Nasdaq Market Center will instead re-open the exhausted market maker's bid/offer quote at a price \$0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than \$0.01, the system will refresh that bid/offer to a price of \$0.01. Except as provided in subparagraph (b)(6) of this rule, a Nasdaq Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days.]

[(6)](4) Notwithstanding the provisions of subparagraph [(5)](3) above:

(A) [a Nasdaq Market Maker that obtains an excused withdrawal pursuant to Rule 4619 or a]An ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 6350 prior to withdrawing from the [Nasdaq Market Center]system may reenter the [Nasdaq Market Center]\_system according to the conditions of its withdrawal; and

(B) [a Nasdaq Market Maker or] An ITS/CAES Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in the trade reporting service of the [Nasdaq Market Center] ITS/CAES System for [Nasdaq Market Center] eligible securities, may reenter the [Nasdaq Market Center] ITS/CAES System after a clearing arrangement has been reestablished and the market maker has complied with requirements for participation in the trade reporting service of the [Nasdaq Market Center] ITS/CAES System. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(7) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from the Nasdaq Market Center pursuant to subparagraph (b)(5) of this rule.]

[(8)](5) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with the [Nasdaq Market Center] system inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from the [Nasdaq Market Center] system, [and] a closed-quote status, and [(a) if the Quoting Market Participants is a Nasdaq Market Maker, an excused withdrawal pursuant to Rule 4619, or (b) an ITS/CAES Market Maker,] an excused withdrawal pursuant to Rule 6350. If withdrawal is granted, [Nasdaq Market] NASD Operations personnel

will enter the withdrawal notification into [Nasdaq Market Center]the system from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

**(c) Reserved**

**(d) Order Entry Firms**

All entries in the [Nasdaq Market Center]system shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide and these rules. Orders may be entered in the [Nasdaq Market Center]system by the Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

**[(e) UTP Exchanges — Direct Participation in Nasdaq Market Center]**

[Direct participation in the Nasdaq Market Center by UTP Exchanges is voluntary. If a UTP Exchange does not participate directly in the Nasdaq Market Center, the UTP Exchange's quotes may nevertheless be accessible in accordance with Rule 4714.]

[A UTP Exchange may voluntarily participate in the Nasdaq Market Center directly if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (f) of this rule. 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 the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the Nasdaq Market Center]

[ (1) Order Entry — UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.]

[ (2) Display of UTP Exchange Quotes/Orders in Nasdaq ]

[ (A) UTP Exchange Principal Orders/Quotes — UTP Exchanges that elect to participate in the system shall transmit to the Nasdaq Market Center a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The Nasdaq Market Center shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MPID for the UTP Exchange, and shall also display such Quote/Order in the order display

service of the Nasdaq Market Center as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(r).]

[(B) UTP Exchange Agency Quotes/Orders]

[(i) A UTP Exchange that elect to participate in the system may transmit to the Nasdaq Market Center Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").]

[(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MPID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the order display service of the Nasdaq Market Center and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as

described in Rule 4707(b)(2).]

[(3) Non-Directed Order Processing — UTP Exchanges that elect to participate in the system shall be required to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.]

[(4) Reserved ]

[(5) Decrementation — UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.]

[(6) Scope of Rules — Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.]

**[Cross Reference-]**

[IM-11890-2, Review by Panels of the MORC]

**4711. Clearance and Settlement**

All transactions executed in, or reported through, the [Nasdaq Market Center]system shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

**4712. Obligation to Honor System Trades**

(a) If a [Nasdaq Market Center] Participant, or clearing member acting on [his]its behalf, is reported by the [Nasdaq Market Center]system to clearing, or shown by the activity reports generated by the [Nasdaq Market Center]system as constituting a side of a [S]system

trade, such [Nasdaq Market Center] Participant, or clearing member acting on [his]its behalf, shall honor such trade on the scheduled settlement date.

(b) Nasdaq shall have no liability if a [Nasdaq Market Center] Participant, or a clearing member acting on [his]its behalf, fails to satisfy the obligations in paragraph (a).

**4713. Compliance with Rules and Registration Requirements**

(a) Failure by a [Nasdaq Market Center] Participant to comply with any of the rules or registration requirements applicable to the [Nasdaq Market Center]system identified herein shall subject such [Nasdaq Market Center] Participant to censure, fine, suspension or revocation of its registration as [a Nasdaq Market Maker,] an ITS/CAES Market Maker, or Order Entry Firm[, and/or Nasdaq ECN] or any other fitting penalty under the Rules of the Association.

(b) (1) If a [Nasdaq Market Center] Participant fails to maintain a clearing relationship as required under paragraph[s] (a)(2)[, (c)(2), or (d)(3)] of Rule 4705, it shall be removed from the [Nasdaq Market Center]system until such time as a clearing arrangement is reestablished.

(2) A [Nasdaq Market Center] Participant that is not in compliance with its obligations under paragraph[s] (a)(2)[, (c)(2), or (d)(3)] of Rule 4705 shall be notified when [Nasdaq]NASD exercises its authority under paragraph (b)(1) of Rule 4713.

(3) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Association's rules, to enforce its rules or impose any fitting sanction.

**4714. [Routing — Nasdaq-Listed Securities] Reserved**

[If a Non-Directed Order for a Nasdaq-listed security is not executed in its entirety in the Nasdaq Market Center and such order is designated for routing, the order (or the unfilled portion thereof — referred to hereinafter as an "order") shall be processed as follows: ]

[(a) The order shall be routed to those markets accessible through the Nasdaq Market Center router that are displaying quotes priced better than the Quotes/Orders available in the Nasdaq Market Center as a limit order. Routed orders shall be executed pursuant to the rules and regulations of the destination market.]

[(b) In the event an order routed from the Nasdaq Market Center to another market is not executed in its entirety, the remaining portion of the order shall be returned to the Nasdaq Market Center and shall be eligible for execution, or re-routing, if marketable. A market order that is converted to a limit order for routing will become a market order again upon return to the Nasdaq Market Center.]

[(c) In the event an order becomes non-marketable while it is in the execution queue, or the order is not marketable upon return to Nasdaq, the order shall be included in the Nasdaq Market Center book (if consistent with the order's time in force condition) in accordance with the time priority established by the time-stamp assigned to the order when it was initially submitted to the Nasdaq Market Center. Once an order is placed in the Nasdaq Market Center book it shall not be routed outside the Nasdaq Market Center unless otherwise instructed.]

[(d) An order that has been routed to another market shall have no time standing in the Nasdaq Market Center execution queue relative to other orders in the Nasdaq Market Center. A request from a Nasdaq Market Center Participant to cancel an order while it is

outside the Nasdaq Market Center shall be processed subject to the applicable rules of the market to which the order has been routed.]

[(e) Orders shall not be routed to other markets during the Nasdaq Market Center Opening and Closing Crosses, as described in Rules 4704 and 4709.]

[(f) Orders shall not be routed to other markets at prices that exceed the execution price governors described in Rule 4710(b)(1)(B)(ii)(c).]

#### **4715. Adjustment of Open Quotes and/or Orders**

The [Nasdaq Market Center]system will automatically adjust the price and/or size of open quotes and/or orders in all [Nasdaq Market Center] eligible securities (unless otherwise noted) resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent (\$0.01), as follows:

(a) Quotes — All bid and offer side quotes shall be purged from the system.

(b) Sell Orders — Sell side orders in [Nasdaq-listed and ]NYSE-listed securities shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system. Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.

(c) Buy Orders — Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (i.e. cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) Odd lot orders in [ITS]eligible [S]securities that result from partial

execution rather than order entry shall be canceled rather than adjusted.

(2) Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".

(3) Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.

(4) Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

(5) Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.

(6) Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) Open buy and sell orders that are adjusted by the system pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

**4719. Anonymity**

**(a) Pre-Trade Anonymity**

(1) With the exception of those transactions described in paragraph (a)(2) below, the identity of the member submitting a Non-Attributable Quote/Orders seeking pre-trade anonymity will remain anonymous until execution, at which time the member's identity will be revealed to its contra party.

(2) A Non-Attributable Quote/Order seeking pre-trade anonymity will be processed on a fully anonymous basis in accordance with paragraph (b) below when it matches and executes against a Non-Attributable Quote/Order seeking full anonymity.

**(b) Full Anonymity**

(1) Transactions executed in the [Nasdaq Market Center]system in which at least one member submits a Non-Attributable Quote/Order seeking full anonymity will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.

(2) Reserved. [(A) The processing described in paragraph (b)(1) shall not apply to transactions executed in the Nasdaq Market Center when the member



whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.]

[(B) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.]

(3) The Association will reveal a member's identity in the following circumstances:

(A) when the National Securities Clearing Corporation ("NSCC") ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades;

(B) for regulatory purposes or to comply with an order of an arbitrator or court; or

(C) on risk management reports provided to the member's contra parties each day after 4:00 p.m., which disclose trading activity on an aggregate dollar value basis.

(4) The Association will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote/Order has been decremented by another Quote/Order submitted by that same member.

(5) (A) In order to satisfy members' record keeping obligations under SEC Rules 17a-3(a)(1) and 17a-4(a), [Nasdaq]NASD shall, with the exception of those circumstances described in subparagraph (B) below, retain for the

period specified in Rule 17a-4(a) the identity of each member that executes a fully anonymous transaction described in paragraph (b) of Rule 4719. The information shall be retained in its original form or a form approved under Rule 17a-6.

(B) In the situations described in paragraphs (b)(2) or (b)(4) of Rule 4719, and solely with respect to the member that submits, and receives an execution of, a fully anonymous Non-Attributable Quote/Order that is a Preferred Order, the member retains the obligation to comply with Rules 17a-3(a)(1) and 17a-4(a) because it possesses the identity of its contra party.

**4720. Reporting Through the Execution Services of the System [Nasdaq Market Center]**

Subject to the conditions set forth below, members may utilize the [Nasdaq Market Center] system to report trades in [Nasdaq Market Center] eligible securities required or eligible to be reported to Nasdaq pursuant to the Rule [4630, 4640, 4650,] 6100 and 6400 Series.

(1) Members shall include the time of execution on reports submitted to the system [Nasdaq Market Center]; and

(2) For transactions between members, the members who are parties to the trade shall agree to all trade details prior to submitting the report to the [Nasdaq Market Center] system, and have in effect and on file with Nasdaq, an Automated Confirmation Transaction Service Service Bureau/Executing Broker Supplement to the Nasdaq [Workstation II] Services Agreement ("Attachment 2 Agreement"), and a Nasdaq National Market Execution System Give-Up Addendum to the Nasdaq

[Workstation II Subscriber] Services Agreement ("[SuperMontage] Nasdaq Give-Up Agreement").

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**4900. BRUT SYSTEM (System)**

**4901. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term "System securities" shall mean ITS Securities as that term is defined in NASD Rule 5210(c) [Nasdaq Market Center eligible securities as that term is defined in NASD Rule 4701(s) and exchange-listed Intermarket Trading System (ITS) eligible securities as defined in NASD Rule 5210(c)].

(b) through (c) No Change.

(d) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better. [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(e) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price. A market order may have a limit price beyond which the order shall not be executed. [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(f) No Change.

(g) The term "[Nasdaq Market Center]ITS/CAES System" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. pursuant to NASD Rule 4700 Series.

(h) No Change.

(i) The term "Participant" shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. The term "Participant" shall also include non-NASD broker/dealers that desire to use the System for ITS Securities and otherwise meet all other requirements for System participation. Non-NASD member broker/dealers shall have access to System until the earlier of either July 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

(j) through (q) No Change.

(r) The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the [Nasdaq inside bid or offer (for Nasdaq-listed securities) or] the national best bid or offer [(for ITS securities)], as appropriate. The Participant entering a Pegged Order can specify that order's price will either equal the inside quote or improve[s] the inside quote by an amount set by the entering party on the same side of the market (a "Regular Pegged Order") or offset the inside quote on the contra side of the market by an amount (the "Offset Amount") set by the Participant (e.g., \$0.01 less than the inside offer or \$0.02 more than the inside bid) (a "Reverse Pegged Order"). The Participant entering a Pegged Order may (but is not required to) specify a limit price, to define a price at which pegging of the order will stop and the order will be permanently converted into an un-pegged limit order at limit price. [This order type is available for Nasdaq-listed and Exchange-listed securities.] Offset amounts for Pegged Orders are priced in \$0.01 increments. However, if at

any time an offset amount specified by a Participant does not result in an offer or a bid that is fully compliant with the minimum price variation provisions of Rule 4904, then, for an offer, the applicable offset amount will be the smallest amount that results in a compliant order and is greater than the specified offset amount, and, for a bid, the applicable offset amount will be the largest amount that results in a compliant order and is smaller, than the specified offset amount.

(s) The term “Discretionary” shall mean an order that when entered into System has both a displayed bid or offer price, as well as a non-displayed discretionary price range and size (which shall be equal to or less than the Order’s Reserve Size) at which the Participant is also willing to buy or sell, if necessary. [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(t) The term "Post Only" shall mean, for To Brut limit orders so designated, that if an order is marketable against an order then-displayed in the System upon receipt, it shall be rejected and returned to the entering Participant. If the order is marketable against a quote displayed outside of Brut, the price of the order is adjusted to a price \$0.01 inferior to the best bid (or offer, as appropriate) then displayed in the [Nasdaq Market Center]ITS/CAES System, and then displayed in the System. [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(u) [The term “Agency Away” shall mean an agency order designated by the entering Participant as eligible for execution at a price inferior to the then-current national best bid/offer. This order type is available only for Nasdaq-listed securities.] Reserved

(v) The term “Principal Inside Only” shall mean a principal order designated by the

entering Participant as only eligible for execution at a price equal or better than the then-current national best bid/offer. [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(w) No Change.

#### **4902. System Participant Registration**

(a) No Change.

(b) Access to the System by non-System participants is available through the [Nasdaq Market Center] ITS/CAES System as [defined] described in the NASD Rule 4700[1(r) and related rules] Series.

#### **4903. Order Entry Parameters**

##### **(a) To Brut Orders—**

(1) General. A To Brut Order is an order that is displayed in the System and is executable only against marketable contra-side orders in the System. [This order type is available for Nasdaq-listed and Exchange-listed securities.] The following requirements shall apply to To Brut Orders entered by Participants:

(A) through (B) No Change.

(C) A To Brut Order to sell short shall not be executed if the execution of such order would violate [NASD Rule 3350 or, in the case of ITS Securities,] SEC Rule 10a-1. In said circumstances, the price of the To Brut Order shall be adjusted to [\$.01 above the Nasdaq inside bid for Nasdaq-listed securities or, in the case of exchange-listed securities,] \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

(D) No Change.

**(b) Brut Cross Orders—**

(1) General. A Brut Cross Order is an order that is displayed in the System, and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. If marketable upon receipt against both orders in the System as well as other market centers, the order shall execute first against System orders. With the exception of Directed Cross Orders, once a Brut Cross Order is routed (in whole or in part) to another market center, any remaining unexecuted or returned portion of the order shall be posted in System and shall no longer be eligible for routing to other market centers. Directed Cross Orders [in exchange-listed securities] directed to the New York Stock Exchange shall remain at the exchange until executed or cancelled by the entering party.

(A) through (C) No Change.

(D) A Brut Cross Order may also be designated as a Directed Cross Order. A Directed Cross Order is an order that is entered into the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. After being processed in the Brut System and exhausting available liquidity in the Brut System, the order is automatically routed by Brut to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed

Cross Orders [in exchange-listed securities] directed to the New York Stock Exchange if, after being processed in the Brut System and exhausting available liquidity in the Brut System, such orders will be automatically routed to the [Nasdaq Market Center]ITS/CAES System and INET for potential execution and thereafter, if instructed by the entering party, to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders [in exchange-listed securities] directed to the New York Stock Exchange shall remain at the New York Stock Exchange until executed or cancelled by the entering party.

(E) No Change.

(F) A Brut Cross Order, including those designated as an Aggressive Cross Order, Super Aggressive Cross Order and Directed Cross Order, to sell short shall not be executed in the System if the execution of such order would violate [NASD Rule 3350 or, in the case of ITS Securities,] SEC Rule 10a-1. In said circumstances, the price of the Brut Cross Order shall be adjusted to [\$.01 above the Nasdaq inside bid for Nasdaq-listed securities or, in the case of exchange-listed securities,] \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

**(c) Thru Brut Orders—**

(1) General. A Thru Brut Order is an order submitted to the System that is designated for routing to another market center. [This order type is available for Nasdaq-listed and Exchange-listed securities.] The following requirements shall



apply to Thru Brut Orders:

(A) through (B) No Change.

**(d) [Hunter Orders—] Reserved**

[(1) General. A Hunter Order is a non-displayed order that will execute against trading interest in the System or another market center. This order type is available only for Nasdaq-listed securities. After 6:30 p.m. Eastern Time, Hunter Orders will execute only against other orders in the System. The following requirements shall apply to Hunter Orders:]

[(A) A Hunter Order shall be a limit order, and must indicate whether it is a buy, short sale, short-sale exempt, or long sale. A Hunter Order can be designated as Immediate or Cancel, End-of-Day, Good-till-Cancelled, Day, or Good-till-Time, or Effective Time.]

[(B) Hunter Orders shall be executed as follows:]

[(i) to the extent marketable upon receipt against orders in the System, pursuant to the Brut Book Process as described in Rule 4905(a); then/or]

[(ii) if not marketable upon receipt against orders in the System but marketable against the displayed quotes of other market centers, pursuant to the Brut Routing Process as described in Rule 4905(b).]

[(iii) If not marketable upon receipt against any quote displayed in the System or another market center, the order shall be

retained, but not be displayed, in the System and shall remain available for execution via the Brut Book and/or Brut Routing Processes should the order become marketable.]

**(e) Entry of Agency and Principal Orders**— Participants are permitted to submit agency, riskless principal, and principal orders for processing in the System. Participants shall correctly note their capacity at the time of entry of an order(s) into the System.

(1) [Unless designated as “Agency Away”, n]No agency order shall be executed at a price inferior to the then current National Best Bid (for sell orders) or Best Offer (for buy orders), taking into account prior efforts to execute against the bids/offers of other market centers.

(2) No Change.

(f) No Change.

#### **4904. Entry and Display of Orders**

(a) No Change.

(b) Display of Orders — The System will display orders submitted to the System as follows:

(1) No Change.

(2) [Nasdaq Market Center]ITS/CAES System— For each [Nasdaq Market Center eligible]System [s]Security, the best priced order to buy and sell resident in the System shall be displayed and eligible for execution within the [Nasdaq Market Center]ITS/CAES System. The System may also provide to the [Nasdaq Market Center]ITS/CAES System additional orders, up to and including all orders in System,

in [Nasdaq Market Center eligible]System [s]Securities.

(3) No Change.

(4) Exceptions — The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding — The System Book Feed shall be capable of displaying trading interest in round lot and mixed-lot amounts, and sub-penny increments for quotations priced under \$1.00.

For [Nasdaq Market Center]ITS/CAES System display purposes, the System shall aggregate all shares, including odd-lot share amounts, entered by Participants at a single price level and round the total share amount down to the nearest round-lot amount. Any odd-lot portion of an order that is not displayed as a result of the rounding process shall remain available for execution, in accordance with the time-priority of their original entry time. Round-lots that are subsequently reduced by executions to a mixed lot amount shall also be rounded for to the nearest round-lot amount for purposes of display in the [Nasdaq Market Center]ITS/CAES System. Any odd-lot number of shares that do not get displayed as a result of rounding will remain available for execution, in accordance with the time-priority of their original entry time.

(B) No Change.

(C) Discretionary [& Hunter] Orders — [Hunter Orders, and t]The discretionary portion of Discretionary Orders shall be available for execution

only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to Rule 4905.

**4905. Order Processing**

**(a) Brut Book Order Process**

Orders subject to the Brut Book Order Process shall be executed as follows:

(1) Default Execution Algorithm — Price/Time — The System shall execute interest within the System in price/time priority in the following order:

(A) No Change.

(B) Reserve Size; and

(C) Discretionary Orders within the Discretionary Order's discretionary price range[; and

(D) Hunter Orders].

(2) No Change.

(3) Processing of Locking/Crossing Orders: If during market hours, a Participant enters a To Brut order that will lock/cross the market (as defined in [NASD Rule 4613(e) or in] NASD Rule 5263(a) or (b)), the System shall adjust the price of the order to \$.01 less than the current best bid quotation (for buy orders) or \$.01 more than the current best offer quotation (for sell orders) and thereafter be processed as a Reverse Pegged Order.

(4) Processing of Directed, Aggressive and Super Aggressive Cross Orders — The System shall process crossed Directed and Aggressive Cross Orders, and locked or crossed Super Aggressive Cross Orders as follows:

(A) Displayed orders which are designated as "Directed Cross Orders" by a Participant shall be routed as described in Rule 4903(b)(1)(D). [This order type is available for Nasdaq-listed and Exchange-listed securities.]

(B) Displayed orders which are designated as "Aggressive Cross Orders" by a Participant that are subsequently crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so crossed. [This order type is available for Nasdaq-listed and Exchange-listed securities]

(C) Displayed orders which are designated as "Super Aggressive Cross Orders" by a Participant that are subsequently locked or crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so locked or crossed. [This order type is available for Nasdaq-listed and Exchange-listed securities]

(b) No Change.

\* \* \* \* \*

**4907. Obligation to Honor System Trades**

(a) No Change.

(b) Brut [and/or Nasdaq] and its affiliates shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

\* \* \* \* \*

**4910. Anonymity**

(a) No Change.

(b) Brut shall reveal a member's identity in the following circumstances:

(1) No Change.

(2) for regulatory purposes or to comply with an order of an arbitrator or court[;].

\* \* \* \* \*

#### **4913. Limitation of Liability**

[Except as provided for in Rule 4705(j), t]The Association and its subsidiaries, as well as Nasdaq and Brut and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System.

\* \* \* \* \*

#### **4950. INET SYSTEM**

##### **4951. Definitions**

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The terms "The INET ECN System," "INET System," or "System," shall mean the automated system owned and operated by [INET]Brut, which is owned and operated by The Nasdaq Stock Market, Inc., which enables Participants to execute transactions in System

securities, to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System for dissemination to the public and the industry, to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the System Participant(s) for clearance and settlement, and to provide System Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(b) The term "System Securities" shall mean ITS Securities as that term is defined in NASD Rule 5210(c) [Nasdaq Market Center eligible securities as that term is defined in NASD Rule 4701(s) and ITS Securities securities as defined in NASD Rule 5210(c)].

(c) No Change.

(d) The term "[Nasdaq Market Center]ITS/CAES System" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. pursuant to NASD Rule 4700 Series.

(e) through (t) No Change.

\* \* \* \* \*

#### **4953. Order Entry Parameters**

##### **(a) INET System Orders**

(1) No Change.

(2) Short Sale Compliance- INET System orders to sell short shall not be executed if the execution of such an order would violate Regulation SHO or Rule 10a-1 under the Exchange Act[, NASD Rule 3350] or, for routed orders, the rules of the applicable self-regulatory organization governing short selling [or, in the case of

ITS Securities, Rule 10a-1 under the Exchange Act]. [For securities listed on Nasdaq, if an order to sell short is entered on a down bid that, if executed upon entry, would violate Rule 3350, the System will automatically re-price the order to \$0.01 above the current national best bid and enter the order on the book. The System will thereafter monitor the order such that if the order becomes marketable but executing the order would result in a violation of Rule 3350, the System will cancel the order off of the book. For non-Nasdaq listed securities, i]If an order to sell short is entered that, if executed upon entry, would violate Exchange Act Rule 10a-1, the System will re-price the order to the next whole minimum price variation above the "last sale" on the consolidated tape and enter the order on the book. The System will thereafter monitor the order such that if the order becomes marketable but executing the order would result in a violation of Exchange Act Rule 10a-1, the System will cancel the order off of the book.

(3) through (4) No Change.

\* \* \* \* \*

#### **4956. Routing**

##### **(a) INET Order Routing Process**

(1) The INET Order Routing Process shall be available to Participants from 7:00 a.m. to 8:00 p.m. Eastern Time, and shall route orders as described below:

##### **(A) [Exchange-Listed] Routing Options**

The System provides eight routing options for orders [in exchange-listed securities]. Of these eight, five – DOT Immediate, DOT Alternative,



DOT Alternative 2, Reactive Only DOT and DOT Nasdaq- are available for orders ultimately sought to be directed to either the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The eight System routing options [for NYSE and/or Amex listed orders] are:

(i) through (iv) No Change.

(v) Reactive Electronic Only (“STGY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. [This process is one of the routing strategies allowed by the System for all securities.]

(vi) Electronic Only Scan (“SCAN”)—under this option, after

checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. [This process is one of the routing strategies allowed by the System for all securities.]

(vii) Aggressive Electronic Only (“SPDY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. Market

orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a de minimis exception to the trade-through rule set forth in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option. [This process is one of the routing strategies allowed by the System for all securities.]

(viii) DOT Nasdaq ("DOTN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the [Nasdaq Market Center] ITS/CAES System and/or Nasdaq's Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-

open/close.

[(B) Nasdaq-Listed Routing Options]

The STGY, SPDY, and SCAN options are the only routing options provided by the System for orders in Nasdaq-listed securities not sought to be directed to either the NYSE or AMEX.]

(C) renumbered as (B)

\* \* \* \* \*

**4958. Obligation to Honor System Trades**

(a) No Change.

(b) INET [and/or Nasdaq] and its affiliates shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

\* \* \* \* \*

**4961. Clearly Erroneous Transactions**

[Commencing no later than 60 days after the System becomes a facility of Nasdaq, a] All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to NASD Rule 11890.

**4962. Minimum Quotation Increment**

The minimum quotation increment in the INET System for quotations of \$1.00 or above [in Nasdaq-listed securities and in securities listed on a national securities exchange] shall be \$0.01. The minimum quotation increment in the INET System for quotations below \$1.00 [in Nasdaq-listed securities and in securities listed on a national securities exchange]

shall be \$0.0001. However, if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of this paragraph) priced in an increment of less than \$0.01 will be adjusted by the INET System down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.

\* \* \* \* \*

**4964. Limitation of Liability**

The Association and its subsidiaries, as well as Nasdaq and INET and their subsidiaries, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System. [Notwithstanding the foregoing, the System may, within its sole discretion and for a period of time not to exceed 60 days after the System becomes a facility of Nasdaq, compensate users for losses arising out of the System or its use.]

\* \* \* \* \*

**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 Capital Markets 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 January 26, 2007.

\* \* \* \* \*

**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) through (D) No Change.

(2) shall halt trading otherwise than on an exchange in the Alternative

Display Facility in an 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 determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or

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

(3) shall close NASD Alternative Display Facility to quotation and trade reporting 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]on other markets for which trading is not halted.

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

**(b) 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 Capital Market” is a distinct tier of [The] Nasdaq [Stock Market] comprised of securities that meet the requirements of and are authorized as a Nasdaq Capital Market Security.

(8) No Change.

(9) “Otherwise than on an exchange” means a trade effected by an NASD member otherwise than on or through 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] an 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]an 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]An 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 [4300A(d)(4)] 4200A, 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 registered reporting ADF market maker 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 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]ADF-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) through (2) No Change.

No Registered Reporting[ 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 transactions in 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 9:30 a.m. Eastern Time on trade date and be designated as “.T” trades to denote their execution outside normal market hours.

(ii) Last sale reports of transactions executed 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 member that is not a Registered Reporting ADF Market Maker, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(3) In transactions between two members that are not Registered Reporting ADF Market Makers, 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 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, in military format unless another provision of NASD rules requires that a different time be included on the report;

(J) through (T) No Change.

(3) No Change.

**(d) 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 in military format, 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 (4) No Change.

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

(6) transactions reported on or through an exchange.

**[(I) Dissemination of Transaction Reports in Convertible Debt Securities]**

[For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through NASD's Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less.]

**(I) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

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

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (m)(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 (m)(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 (m)(1) shall report the cancellation on the following business day by 6:30 p.m.

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

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

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



p.m., or (ii) by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.

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

**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. For purposes of the 5000 Series, "otherwise than on an exchange" means a trade effected by an NASD member otherwise than on or through 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.

\* \* \* \* \*

**5110. 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 exchange via the Consolidated Tape.

\* \* \* \* \*

**5200. Intermarket Trading System/Computer Assisted Execution System**

**5210. Definitions**

(a) through (i) No Change.

(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) through (e) No Change.

(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[.];

and

(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)](i) 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.

\* \* \* \* \*

**5260. System Trade and Quotations**

\* \* \* \* \*

**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) through (8) No Change.

(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) through (c) No Change.

\* \* \* \* \*

#### **5266. Market Participant Identifiers**

(a) No Change.

(b) For a [six-month] pilot period ending November 30, 2006, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An ITS/CAES

market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

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

\* \* \* \* \*

**5300. [The Portal Market] Reserved**

**6700. Transaction Reporting in PORTAL<sup>®</sup> Securities**

**[53]6710. Definitions**

For purposes of the [PORTAL<sup>®</sup> Market Rules] Rule 6700 Series, 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<sup>®</sup>” 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 ]The Nasdaq Stock Market LLC 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.

[(m)](o) “Transaction” or “trade” means the purchase or sale of a PORTAL security.

[(n)](p) “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 depository 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 depository 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 Change.

**[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]6620(c), 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] 6620(b).

(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) No Change.

(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]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. NASD Rules [of the Association]**

(a) The following NASD Rules [of the Association ]and Interpretative Material [there under]thereunder are specifically applicable to transactions and business activities relating to PORTAL securities:

(1) through (3) No Change.

(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) through (2) No Change.

(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) No Change.

(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) No Change.

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

[(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.]

[(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.]

[(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.]

**[(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 listed in Rule 6120(a)(4) 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 designated securities as defined in

Rule 4200, all eligible securities as defined in Rule 6410, 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 designated securities as defined in Rule 4200, the trade reporting service of the



ITS/CAES System for purposes of eligible securities as defined in Rule 6410, and the OTC Reporting Facility for purposes of OTC Equity Securities as defined in Rule 6600 and Direct Participation Programs as defined in Rule 6910.

(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.

(5) 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 a Participant application agreement, as applicable, 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 by NASD. 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 Reporting 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 in military format, 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**

With the exception of trades cancelled by NASD staff in accordance with Rule 11890, 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 requirements set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines set forth in Rules 4632 and 6620 for reporting cancelled trades.

**IM-6130. Trade Reporting of Short Sales**

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, Capital Market, 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)**

\* \* \* \* \*

**6330. Obligations of CQS Market Makers**

(a) through (c) No Change.

**(d) Minimum Price Variation**

(1) No Change.

(2) A quotation for a security listed on the New York Stock Exchange or the

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

\* \* \* \* \*

**6350. Withdrawal of Quotations**

(a) No Change.

(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]6431.

\* \* \* \* \*

**6400. Reporting Transactions in Listed Securities**

\* \* \* \* \*

**6420. Transaction Reporting**

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

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

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

(2) (A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to [the] Nasdaq [Market Center], or by telephone to the Nasdaq [Market Center] Operations Department if the [Nasdaq Market Center] reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities



exchange. Transactions not reported within 90 seconds after execution shall be designated as late.

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

(3) (A) No Change.

(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) through (6) No Change.

(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) through (9) No Change.

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

(b) through (c) No Change.

**(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) through (2) No Change.

(3) (A) No Change.

(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) through (ii) No Change.

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) 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, 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) No Change.

\* \* \* \* \*

**6430. Suspension of Trading**

(a) No Change.

(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]6431.

**6431. Trading Halts**

**(a) Authority to Initiate Halts In Trading of Eligible Securities**

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

(1) shall halt trading otherwise than on an exchange in an eligible 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 otherwise than on an exchange in an 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 the ITS/CAES System to quotation and trade reporting activity whenever the ITS/CAES System is unable to transmit real-time quotation and trade reporting information to the applicable Securities Information Processor. If the ITS/CAES System closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a designated 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 6431(a) to initiate a trading halt or close the ITS/CAES System, 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.

**6440. Trading Practices**

(a) through (h) No Change.

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

\* \* \* \* \*

**6500. OTC Bulletin Board<sup>®</sup> 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) through (B) No Change

(2) through (5) 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) any equity security that meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE), The NASDAQ Stock Market LLC (Nasdaq), or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE, Nasdaq, or AMEX preceding the actual delisting; and

(3) 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]6640 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.<sup>1</sup>

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<sup>1</sup> No Change to footnote text.

**(1) Permissible Quotation Entries**

(A) No Change.

(B) A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Rule [6750]6650. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.

(C) A priced bid and/or offer entered into the Service for a Direct Participation Program security shall be non-firm.<sup>2</sup> 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.<sup>3</sup>

<sup>2</sup> The non-firm or indicative nature of a priced entry is specifically identified on the montage of market maker quotations [accessible through the Nasdaq Workstation service] for this subset of OTCBB-eligible securities.

<sup>3</sup> 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 Department 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) through (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, 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 Depository 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 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) the OTCBB security or the security underlying the OTCBB ADR is a derivative or component of a security listed on or registered with a national securities exchange[, The Nasdaq Stock Market,] or foreign securities exchange or market (“listed security”), and the national securities exchange, [The Nasdaq Stock Market,] or foreign securities exchange or market[, ] imposes a trading halt in the listed

security[.]; or

(3) No Change.

(b) through (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)](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. 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”]“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.<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>[2]</sup>

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<sup>[2]</sup> 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 report 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 in accordance with Rule 11890, 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 the 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 Depository 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.

<b>Price (Bid or Offer)</b>	<b>Minimum Quote Size</b>
0 - .50[*] <sup>1</sup>	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

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[<sup>\*</sup>]<sup>1</sup> No Change to Text of Footnote.

[(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<sup>SM</sup>.]

**[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 News 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 Change.

(3) Transactions executed on a [registered] national securities exchange [or through Nasdaq].

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**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) renumbered (b) through (h).

[(j)](i) "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)](j) "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) renumbered (k) through (m).

## **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.

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**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<sub>2</sub>[.]

(H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable, and

(I) identification of the non-member where the trade was transmitted.

**(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.

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**6100A. TRACS TRADE COMPARISON SERVICE**

**6110A. Definitions**

(a) through (d) No Change.

(e) The term "Participant" shall mean any member of NASD in good standing that

uses the TRACS system as a[n NASD ADF] Registered Reporting ADF Market Maker or Registered Reporting ADF ECN as defined in Rule 4200A, according to the requirements of Rule 4611A and other pertinent NASD Rules, [an ECN registered in accordance with Rule 4623A,] an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.

(f) Reserved. [The terms "Participant," "TRACS 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 listed in Rule 6120A(a)(5) below and their qualifying members.]

(g) No Change.

(h) The term "Reportable TRACS Transaction" shall mean those transactions in a TRACS eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule 4630A[, 5400 and 6400A] Series. The term also shall include transactions in TRACS eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term "Reporting Party" or "Reporting Member" shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4630A Series.

(j) No Change.

(k) The term "TRACS ECN" shall mean a member of NASD that is a Registered Reporting ADF ECN [an electronic communications network ("ECN")] that elects to display

orders in NASD's Alternative Display Facility [pursuant to Rule 4623A ]and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. [This term shall also include an NASD member that is an alternative trading system ("ATS") that displays orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.]

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

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

(n) No Change.

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

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

(a) (1) No Change.

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

(A) execution of, and continuing compliance with, a TRACS trade

comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

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

(D) through (E) No Change.

(3) through (4) No Change.

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

(A) through (E) No Change.

(6) No Change.

**(b) Participant Obligations in TRACS**

(1) through (5) No Change.

**6130A. Trade Report Input**

**(a) Reportable TRACS Transactions**

Members shall utilize TRACS to report transactions that are required to be reported to NASD through the ADF pursuant to the Rule 4630A [and 5430] Series, including executions of less than one round lot if those executions are to be compared and locked-in.

[Members may utilize TRACS to report transactions that are eligible to be reported to NASD pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in.] TRACS also will process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4630A Series will be transmitted to the applicable securities information processor; 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 TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC.

**(b) When and How Trade Reports are Submitted to TRACS**

(1) No Change.

(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule [4632(c) or (d)] 4632A, as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.

(3) No Change.

(4) Reporting [NASD] Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting [NASD] Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) No Change.

**6140A. TRACS Processing**

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

**(a) Trade Acceptance**

The [reporting party] 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 TRACS system at the end of trade date processing;

(b) 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.]

\* \* \* \* \*

## **8200. INVESTIGATIONS**

\* \* \* \* \*

### **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 trading-related rules such as the Rules 3300, 4000, 4000A, 5000, 6000 and 6000A Series [those Rules designated as Trading Rules (Rule 3300 Series), the

Nasdaq Stock Market Rules (Rule 4000 Series), NASD Alternative Display Facility Rules (Rule 4000A Series), other Nasdaq and NASD Market 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 or Replacement Hearing Officer**

(a) No Change.

**(b) Hearing Panel**

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and 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**

**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 NASD, 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, or 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 NASD [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 or telephonically and by counsel and to submit any relevant matter. In any such proceeding a record shall be kept.

\* \* \* \* \*

**9760. Review by the Committee[Nasdaq Listing and Hearing Review Council]**

The decision shall be subject to review by a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members (the “Committee”)[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 Committee[Nasdaq Listing and Hearing Review Council], shall not operate as a stay of the decision.

**9770. Findings of the Committee[Nasdaq Listing and Hearing Review Council] on Review**

Upon consideration of the record, and after such further hearings as it shall order, the Committee[Nasdaq Listing and Hearing Review Council] shall affirm, modify, reverse, dismiss, or remand the decision. The Committee[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 Committee[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 Committee's[Nasdaq Listing and Hearing Review Council's] decision but which is 15 calendar days or more following the decision of the Committee[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 Committee[Nasdaq Listing and Hearing Review Council] within the 15 calendar day period following the decision of the Committee[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 Committee [Nasdaq Listing and Hearing Review Council] determinations. The



Board shall affirm, modify or reverse the determinations of the Committee[Nasdaq Listing and Hearing Review Council] or remand the matter to the Committee[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 NASD 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 NASD 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 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**

**(a) Authority to Review Transactions Pursuant to Complaint of Market**

**Participant**

**(1) Scope of Authority.**

(A) Subject to the limitations described in paragraph (a)(2)(C) below, 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 in a non-Nasdaq exchange-listed security 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 if the transaction is

eligible for review under the Rule and if 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] a 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) through (ii) No Change.

(B) No Change.

(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

(i) No Change.

(ii) For [trades in Nasdaq securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time, or] trades in non-Nasdaq exchange-listed securities executed between the time when the primary market for the security first posts an executable two-sided quote for its regular market trading session and 4:00 p.m. Eastern Time, the price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or

exceeds the minimum threshold set forth below:

<b>Inside Price</b>	<b>Minimum Threshold</b>
\$0 – \$0.99	$\$0.02 + (0.10 \times \text{Inside Price})$
\$1.00 – \$4.99	$\$0.12 + (0.07 \times (\text{Inside Price} - \$1.00))$
\$5.00 – \$14.99	$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00))$
\$15 or more	\$1.00

For [a transaction to buy (sell) a Nasdaq security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for] a transaction to buy (sell) a non-Nasdaq exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed. A [“Nasdaq security” means a security for which transaction reports are disseminated under the Nasdaq UTP Plan, and a] “non-Nasdaq exchange-listed security” means a security for which transaction reports are disseminated under the Consolidated Tape Association Plan. The “primary market” for a non-Nasdaq exchange-listed [S]security is the market designated as the primary market under the Consolidated Tape Association Plan.

(D) through (E) No Change.

(F) Each member[, member of a UTP Exchange,] or person associated

with [any such] a 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 paragraphs (a)(2)(B) and (D) above.

(G) No Change.

**(b) Procedures for Reviewing Transactions on NASD's or Nasdaq's Own**

**Motion**

(1) 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 in [Nasdaq or] non-Nasdaq exchange-listed securities 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 the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions 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, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD 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 the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by



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”) or the Uniform Practice Code (“UPC”) Committee**

(1) Subject to the limitations described in paragraph (c)(2), a member[, member of a UTP Exchange,] or person associated with [any such] a member may appeal a determination made under paragraph (a) to the MORC. A member[, member of a UTP Exchange,] or person associated with [any such] a member may appeal a determination made under paragraph (b)(1) to the MORC, or a determination made under paragraph (b)(2) to the UPC Committee, 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 or NASD, as applicable, within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq or NASD notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal 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 appropriate Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal

process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), once a party has appealed a determination to the appropriate Committee, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such hearings as it may in its discretion order, the MORC or the UPC Committee, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) through (3) No Change.

(d) No Change.

\* \* \* \* \*

**IM-11890-3. Application of Rule 11890(a)(2)(C)**

The following example is intended to assist market participants in understanding the minimum price deviation thresholds in paragraph (a)(2)(C) and their effect on the eligibility of transactions for review under Rule 11890.

ABC[D], a non-Nasdaq exchange-listed security, has an inside market of (bid) \$12.00 – \$12.05 (ask). Market Maker A (MMA) enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order 'sweeps' the Nasdaq [Market Center] order file, which reflects 1,000 shares of liquidity offered at each of ten prices ranging from \$12.05 to \$12.95. Executions occur, moving

through the depth of file, as follows:

- Trade #1 – 1000 shares @ \$12.05 (9000 remaining)
- Trade #2 – 1000 shares @ \$12.10 (8000 remaining)
- Trade #3 – 1000 shares @ \$12.15 (7000 remaining)
- Trade #4 – 1000 shares @ \$12.25 (6000 remaining)
- Trade #5 – 1000 shares @ \$12.35 (5000 remaining)
- Trade #6 – 1000 shares @ \$12.45 (4000 remaining)
- Trade #7 – 1000 shares @ \$12.55 (3000 remaining)
- Trade #8 – 1000 shares @ \$12.65 (2000 remaining)
- Trade #9 – 1000 shares @ \$12.90 (1000 remaining)
- Trade #10 – 1000 shares @ \$12.95 (complete)

The inside offer at the time the first share of the order was executed is \$12.05, so the minimum price deviation threshold is determined using the following formula:

$$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00)) = \$0.40 + (0.06 \times (\$12.05 - \$5.00)) = \$0.82$$

Thus, to be eligible for review, a transaction must be at a price that is at least \$0.82 higher than the original best offer price (i.e.,  $\$12.05 + \$0.82 = \$12.87$ ). MMA could petition for review of trades #9 and #10, priced at \$12.90 and \$12.95 respectively, but trades #1 through #8 would not be eligible for review. The sole basis for an appeal to the MORC of the determination that trades #1 through #8 are not eligible for review would be an assertion of a mistake of material fact. For example, an appeal could be based upon an assertion that the Nasdaq officer had made an arithmetical error in determining the minimum price deviation threshold, or had erred in determining the applicable inside price.

\* \* \* \* \*