

OMB APPROVAL

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

File No. SR - 2007 - 012

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☐Section 19(b)(3)(A) ☒Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☒ 19b-4(f)(6)

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

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

Proposal Relating to Implementation of Certain Approved NASD Rule Changes Upon the Operation of the Nasdaq
Stock Market LLC for Non-Nasdaq Exchange-Listed Securities

Contact Information

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

First Name Last Name
Title
E-mail
Telephone Fax

Signature

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

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

Date

By
(Name)

(Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

Add

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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

Add

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add

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View

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

Add

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View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (1) provide notice that the amendments to the Rule 4700 Series that were approved pursuant to SR-NASD-2006-104² will not be implemented; (2) implement certain amendments that were approved pursuant to SR-NASD-2006-104 upon the operation of the Nasdaq Stock Market LLC (the “Nasdaq Exchange”) as a national securities exchange for non-Nasdaq exchange-listed securities; and (3) propose additional changes that were not approved pursuant to SR-NASD-2006-104, specifically, the deletion of the Rule 4700 Series and Rule 5150. All other rule changes that were approved pursuant to SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135,³ will be implemented upon the operation of NASD’s Alternative Display Facility (“ADF”) for non-Nasdaq exchange-listed securities, as approved by the SEC on September 28, 2006.⁴

The text of the proposed amendments, which were not approved pursuant to SR-NASD-2006-104, is attached as Exhibit 5 to this rule filing.

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

³ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135).

⁴ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved on June 9, 2005 by the Executive Committee of the Board of Governors of NASD, which authorized the filing of the rule change with the Commission. 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.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

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

(a) Purpose

On June 30, 2006, the Commission approved SR-NASD-2005-087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange for Nasdaq-listed securities during a transitional period and also proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq Trade Reporting Facility (the "NASD/Nasdaq TRF").⁵ On November 21, 2006, the Commission approved SR-NASD-2006-104, which, among other things, proposed amendments necessary to reflect

⁵ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

the complete separation of The Nasdaq Stock Market Inc. (“Nasdaq”) from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and also proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting of over-the-counter trades in non-Nasdaq exchange-listed securities.⁶

As originally approved, the rule changes in SR-NASD-2006-104 were to become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities. However, as described in SR-NASD-2006-135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD’s behalf via the Transitional System and Regulatory Services Agreement.⁷ As contemplated in SR-NASD-2006-135, NASD has determined to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange’s operation as an exchange for non-Nasdaq exchange-listed securities, which is currently scheduled for February 12, 2007.⁸ As such, the current rules relating to SiM will remain

⁶ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

⁷ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135). In that filing, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of the Nasdaq By-Laws, which were previously approved in SR-NASD-2006-104, were implemented on December 20, 2006 to reflect Nasdaq’s complete separation from NASD, and, on that same date, dissolution of NASD’s controlling share in Nasdaq.

⁸ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135), note 9.

in place and the approved rule changes to the Rule 4700 Series in SR-NASD-2006-104 will not be implemented.

In addition, the following rule changes that were approved pursuant to SR-NASD-2006-104 will be implemented on the date upon which the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities: (1) deletion of the Rule 4900 Series and the 4950 Series; and (2) adoption of new Rules 5120 (Other Trading Practices) and 5130 (Obligation to Provide Information) relating to trading otherwise than on an exchange. All other rule changes that are part of SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135 (i.e., amendments to the Rule 0100 Series; amendments to the Rule 4000 Series and Rule 6100 Series relating to the NASD/Nasdaq TRF; deletion of Rule 4400; amendments to Rule 11890, Interpretive Material (IM) 11890-1 and IM-11890-2; and the deletion of IM-11890-3), will be implemented upon the operation of the ADF for non-Nasdaq exchange-listed securities, which will be the Regulation NMS Trading Phase Date (currently anticipated to be March 5, 2007).⁹

In this proposed rule change, NASD is proposing two additional rule changes that were not approved as part of SR-NASD-2006-104. First, NASD is proposing to delete the Rule 4700 Series in its entirety upon the operation of the ADF for non-Nasdaq exchange-listed securities.¹⁰ Second, NASD is proposing to delete Rule 5150 upon the

⁹ Pursuant to SR-NASD-2006-091, among other changes, the following will be deleted from the NASD Manual on the Trading Phase Date: the Rule 5200 Series, the Rule 6300 Series and the Rule 6400 Series.

¹⁰ Thus, in the period between commencement of operation of the Nasdaq Exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will remain in the NASD

operation of the ADF for non-Nasdaq exchange-listed securities. Rule 5150 requires an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to NASD. Rule 5150 was approved by the SEC on September 19, 2006 and will become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.¹¹ Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 5200 Series, including Rule 5262, will be deleted pursuant to NASD-2006-091. Thus, NASD is proposing to delete Rule 5150 on that same date.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² 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 in

Manual as it exists today. Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will be deleted in its entirety.

¹¹ See Securities Exchange Act Release No. 54471 (September 19, 2006), 71 FR 56202 (September 26, 2006) (order approving SR-NASD-2006-081).

¹² 15 U.S.C. 78o-3(b)(6).

non-Nasdaq exchange-listed securities upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities.

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

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

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,¹³ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing (subject to waiver by the Commission). NASD requests that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁴ NASD also requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

date of the filing as set forth in Rule 19b-4(f)(6)(iii).¹⁵ NASD believes that such waivers are appropriate in light of the fact that the proposed rule change was subject to notice and comment and approved by the Commission on November 21, 2006¹⁶ and they are necessary so that the rule changes can be implemented as described herein.

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

Not applicable.

9. Exhibits

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

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

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-012)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposal Relating to Implementation of Certain Approved NASD Rule Changes Upon the Operation of the Nasdaq Stock Market LLC for Non-Nasdaq Exchange-Listed Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD has filed a proposed rule change to (1) provide notice that the amendments to the Rule 4700 Series that were approved pursuant to SR-NASD-2006-104⁴ will not be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

implemented; (2) implement certain amendments that were approved pursuant to SR-NASD-2006-104 upon the operation of the Nasdaq Stock Market LLC (the “Nasdaq Exchange”) as a national securities exchange for non-Nasdaq exchange-listed securities; and (3) propose additional changes that were not approved pursuant to SR-NASD-2006-104, specifically the deletion of the Rule 4700 Series and Rule 5150. All other rule changes that were approved pursuant to SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135,⁵ will be implemented upon the operation of NASD’s Alternative Display Facility (“ADF”) for non-Nasdaq exchange-listed securities, as approved by the SEC on September 28, 2006.⁶

The text of the proposed amendments, which were not approved pursuant to SR-NASD-2006-104, is attached as Exhibit 5 to this rule filing.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁵ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135).

⁶ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

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

1. Purpose

On June 30, 2006, the Commission approved SR-NASD-2005-087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange for Nasdaq-listed securities during a transitional period and also proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”).⁷ On November 21, 2006, the Commission approved SR-NASD-2006-104, which, among other things, proposed amendments necessary to reflect the complete separation of The Nasdaq Stock Market Inc. (“Nasdaq”) from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and also proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting of over-the-counter trades in non-Nasdaq exchange-listed securities.⁸

As originally approved, the rule changes in SR-NASD-2006-104 were to become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities. However, as described in SR-NASD-2006-135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD’s behalf via the Transitional System and Regulatory

⁷ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

⁸ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

Services Agreement.⁹ As contemplated in SR-NASD-2006-135, NASD has determined to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities, which is currently scheduled for February 12, 2007.¹⁰ As such, the current rules relating to SiM will remain in place and the approved rule changes to the Rule 4700 Series in SR-NASD-2006-104 will not be implemented.

In addition, the following rule changes that were approved pursuant to SR-NASD-2006-104 will be implemented on the date upon which the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities: (1) deletion of the Rule 4900 Series and the 4950 Series; and (2) adoption of new Rules 5120 (Other Trading Practices) and 5130 (Obligation to Provide Information) relating to trading otherwise than on an exchange. All other rule changes that are part of SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135 (i.e., amendments to the Rule 0100 Series; amendments to the Rule 4000 Series and Rule 6100 Series relating to the NASD/Nasdaq TRF; deletion of Rule 4400; amendments to Rule 11890, Interpretive Material (IM) 11890-1 and IM-11890-2; and the deletion of IM-11890-3), will be

⁹ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135). In that filing, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of the Nasdaq By-Laws, which were previously approved in SR-NASD-2006-104, were implemented on December 20, 2006 to reflect Nasdaq's complete separation from NASD, and, on that same date, dissolution of NASD's controlling share in Nasdaq.

¹⁰ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135), note 9.

implemented upon the operation of the ADF for non-Nasdaq exchange-listed securities, which will be the Regulation NMS Trading Phase Date (currently anticipated to be March 5, 2007).¹¹

In this proposed rule change, NASD is proposing two additional rule changes that were not approved as part of SR-NASD-2006-104. First, NASD is proposing to delete the Rule 4700 Series in its entirety upon the operation of the ADF for non-Nasdaq exchange-listed securities.¹² Second, NASD is proposing to delete Rule 5150 upon the operation of the ADF for non-Nasdaq exchange-listed securities. Rule 5150 requires an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to NASD. Rule 5150 was approved by the SEC on September 19, 2006 and will become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.¹³ Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 5200 Series, including Rule 5262, will be deleted pursuant to NASD-2006-091. Thus, NASD is proposing to delete Rule 5150 on that same date.

NASD has filed the proposed rule change for immediate effectiveness. NASD

¹¹ Pursuant to SR-NASD-2006-091, among other changes, the following will be deleted from the NASD Manual on the Trading Phase Date: the Rule 5200 Series, the Rule 6300 Series and the Rule 6400 Series.

¹² Thus, in the period between commencement of operation of the Nasdaq Exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will remain in the NASD Manual as it exists today. Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will be deleted in its entirety.

¹³ See Securities Exchange Act Release No. 54471 (September 19, 2006), 71 FR 56202 (September 26, 2006) (order approving SR-NASD-2006-081).

proposes to implement the proposed rule change as described herein.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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 in non-Nasdaq exchange-listed securities upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities.

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

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

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant

¹⁴ 15 U.S.C. 78o-3(b)(6).

to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁵ NASD has requested that the Commission waive the five-day pre-filing notice requirement specified in Rule 19b-4(f)(6)(iii) under the Act.¹⁶ NASD also has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii).¹⁷ NASD believes that such waivers are appropriate in light of the fact that the proposed rule change was subject to notice and comment and approved by the Commission on November 21, 2006¹⁸ and they are necessary so that the rule changes can be implemented as described herein.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-012 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-2007-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-012 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.¹⁹

Nancy M. Morris

Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

[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 preferenced 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; and]

[(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 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).]

[(d) Between 7:30 a.m. and 9:25 a.m., the system shall display Quotes of ITS/CAES Market Makers in accordance with the entry parameters set by each ITS/CAES Market Maker. At 9:25 a.m., the system shall display all remaining Quotes in accordance with each firm's instructions. ITS/CAES Market Makers may instruct

Nasdaq to display their Quotes as follows:]

[(1) At the last price and size entered by the ITS/CAES Market Maker during the previous trading day, either including or excluding reserve size;]

[(2) At a price and size entered by the ITS/CAES Market Maker between 7:30 a.m. and 9:24:59 a.m.; or]

[(3) At the quotation limits for the ITS/CAES System, currently \$.01 (bid) and \$200,001 (ask).]

[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)(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 immediately in any manner, 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 Association's 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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5000. TRADING OTHERWISE THAN ON AN EXCHANGE

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[5150. Applicability of Trade-Through Rule to Nasdaq Market Makers]

[An NASD member shall comply with the provisions of Rule 5262 (Trade-Throughs), as if it were an ITS/CAES market maker, for purposes of transactions that are reported to NASD in any ITS Security, as that term is defined in Rule 5210(c), in which such member is registered as a market maker with The NASDAQ Stock Market LLC. For purposes of this Rule 5150, the term "Block Transaction" under Rule 5262(a)(7)(B) shall mean any trade that involves 10,000 or more shares of an ITS security or a quantity of any such security having a market value of \$200,000 or more.]

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