

MARKETPLACE RULES

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MARKETPLACE RULES**4000. NASDAQ****4100. GENERAL****4110. Use of Nasdaq on a Test Basis**

Notwithstanding the eligibility standards set forth in the Rule 4300 and 4400 Series, Nasdaq may at any time authorize the use of Nasdaq on a test basis for whatever studies it considers necessary and appropriate.

4120. Trading Halts**(a) Authority to Initiate Trading Halts**

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1) halt trading in a security listed on Nasdaq to permit the dissemination of material news; or

(2) halt trading within Nasdaq of a security listed on another national securities exchange and traded pursuant to unlisted trading privileges during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) halt trading by: (i) CQS market makers in a CQS security when another national securities exchange imposes a trading halt in that CQS security because of an order imbalance or influx ("operational trading halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and another national securities exchange imposes an operational trading halt in that CQS security. CQS and Nasdaq market makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b); or

(4) halt trading in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) material news;

(ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 and 4400 Series; or

(iii) or any other information which is necessary to protect investors and the public interest.

(b) Procedure for Initiating a Trading Halt

(1) Nasdaq issuers are required to notify Nasdaq of the release of any material news prior to the release of such information to the press as required by Rule 4310(c)(16) and 4320(e)(14).

(2) Notification shall be provided directly to Nasdaq's MarketWatch Department by telephone, facsimile, or other compatible means of electronic communication.ⁱ Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

(3) Upon receipt of information, from the issuer or other source, Nasdaq will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

(4) Should Nasdaq determine that a basis exists under Rule 4120(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) for initiating a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq "NEWS" frame.

(5) Trading in a halted security shall resume upon notice via the Nasdaq "NEWS" frame that a trading halt is no longer in effect.

Selected NASD Notices to Members: 88-46, 94-98.

IM-4120-1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(e)(14) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through the news media any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions and that Nasdaq issuers notify Nasdaq of the release of any such information prior to its release to the public through the news media. Nasdaq recommends that Nasdaq issuers provide such notification at least ten minutes before such release.ⁱⁱ Under unusual circumstances issuers may not be required to make public

disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its legitimate corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to Nasdaq upon request pursuant to Rules 4310(c)(15) or 4320(e)(13).

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the issuer becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though the issuer may not have previously been advised of such information or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known to them but which is not known to others. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

Nasdaq's MarketWatch monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the MarketWatch Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the issuer's

securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature. The following list of events, while not an exhaustive summary of all situations in which disclosure to Nasdaq should be considered, may be helpful in determining whether information is material. It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt.

- a merger, acquisition or joint venture;
- a stock split or stock dividend;
- earnings and dividends of an unusual nature;
- the acquisition or loss of a significant contract;
- a significant new product or discovery;
- a change in control or a significant change in management;
- a call of securities for redemption;
- the public or private sale of a significant amount of additional securities;
- the purchase or sale of a significant asset;
- a significant labor dispute;
- establishment of a program to make purchases of the issuer's own shares;
- a tender offer for another issuer's securities; and

an event requiring the filing of a current report under the Act.

Use of the Internet In the Disclosure of Material Information

While Nasdaq requires that its listed issuers disseminate material press releases over one of the major news wires, Nasdaq recognizes the increased utilization of the Internet as a vehicle for additional news dissemination. The Internet is a valuable disclosure resource that can enhance the orderly dissemination of material information for all shareholders and market participants.

Issuers can and should provide shareholders direct access to corporate disclosures via their Internet home pages and web sites.

To ensure a level playing field for all investors in Nasdaq companies, however, this policy on disclosure of corporate information requires that the use of the Internet to disseminate material press releases is appropriate provided the information is not made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services. Issuers must still notify Nasdaq at least ten minutes prior to the release of any information that would reasonably be expected to affect the value of securities or influence investors' decisions, as indicated in this policy.

IM-4120-2. [Reserved]

IM-4120-3. Market Closing Policy

Nasdaq has consistently asserted that circuit breakers should only be used in response to extraordinary price movement. Nasdaq's strong preference is that markets remain open wherever possible and, most importantly, remain open at the end of the day.

Nasdaq recognizes, however, the risks imposed on any single market that remains open while all other U.S. markets have halted trading in response to extraordinary price movements. Therefore, Nasdaq has determined to halt, upon SEC request, all trading in the securities listed on Nasdaq and all other equity and equity-related securities trading on Nasdaq pursuant to unlisted trading privileges should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions.

This determination reflects Nasdaq's policy of cooperation with the Commission and other market participants on issues relating to trading halts and represents Nasdaq's continued commitment to the establishment of circuit breaker standards that both keep markets open longer during periods of market stress and that are also more reflective of market activity as a whole.

Towards that end, Nasdaq believes that additional future changes to circuit breakers are warranted. In particular, Nasdaq is concerned that the Dow Jones Industrial Average, despite recent improvements including the addition of a small number of

Nasdaq stocks, remains an inappropriately narrow indicator of market price declines. As an alternative, Nasdaq believes that the Commission should consider replacing the DJIA with the larger and more diverse Standard and Poor's 500 Index as the measure that best reflects overall market activity for circuit breaker purposes. Nasdaq hopes to revisit this issue with the Commission in the future.

This Policy Statement on Market Closings shall remain in effect until April 30, 2002, unless otherwise modified, or extended prior thereto, by Nasdaq.

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) "AICPA" means the American Institute of Certified Public Accountants.
- (4) "Best efforts offering" means an offering of securities by members of a selling group under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.
- (5) "CQS market maker" means a dealer that, with respect to a reported security, holds itself out as being willing to buy and sell such security for its own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size and that is registered as such.
- (6) "Cash available for distribution" means cash flow of a limited partnership less amount set aside for restoration or creation of reserves.
- (7) "Cash flow" means cash funds provided from limited partnership operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.
- (8) "Consolidated Quotations Service" (CQS) means the consolidated quotation collection system for listed securities implementing SEC Rule 11 Acl-1.
Cross Reference - Rule 6300 Series, Consolidated Quotations Service
- (9) "Country of Domicile" means the country under whose laws an issuer is organized or incorporated.
- (10) "Direct Registration Program" means any program by an issuer, directly or through its transfer agent, whereby a shareholder may have securities

registered in the shareholder's name on the books of the issuer or its transfer agent without the need for a physical certificate to evidence ownership.

(11) "Dissenting Limited Partner" means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by Nasdaq, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of Nasdaq during the period in which the offer is outstanding. Such objection in writing shall be filed with the party responsible for tabulating the votes or tenders.

(12) "ESOP" means employee stock option plan.

(13) "Firm commitment offering" means an offering of securities by participants in a selling syndicate under an agreement that imposes a financial commitment on participants in such syndicate to purchase such securities.

(14) "Independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;

(B) a director who accepts any compensation from the corporation or any of its affiliates in excess of \$60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(C) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home;

(D) a director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's

consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the past three years;

(E) a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

(15) "Index warrants" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index. Index warrants may be based on either foreign or domestic indexes.

(16) "Limited partner" or "investor in a limited partnership" means the purchaser of an interest in a direct participation program, as defined in Rule 2810, that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability.

(17) "Limited partnership" means an unincorporated association that is a direct participation program, as defined in Rule 2810, organized as a limited partnership whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable statute that regulates the organization of such partnership.

(18) "Limited Partnership Rollup Transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which:

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Actⁱⁱⁱ;

(B) any of the investors' limited partnership securities are not, as of the date of the filing, reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Act;

(C) investors in any of the limited partnerships involved are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue. Notwithstanding the foregoing definition, a "limited partnership rollup transaction" does not include:

(i) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(ii) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled or exchanged pursuant to the terms of the pre-existing limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(iii) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

(iv) a transaction that involves only issuers that are not required to register or report under Section 12 of the Act, both before and after the transaction;

(v) a transaction, except as the Commission may otherwise provide for by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of the general partner or sponsor, if:

a. such action is approved by not less than 66-2/3 percent of the outstanding units of each of the participating limited partnerships; and

b. as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the pre-existing partnership agreements; or

(vi) a transaction, except as the Commission may otherwise provide for by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared

effective before January 1, 1991, by the Commission under Section 11A of the Act^{iv}; if:

a. such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

b. the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or subsidiary of the entity.

(vii) a transaction involving only entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act.

(19) "Management fee" means a fee paid to the sponsor, general partner(s), their affiliates, or other persons for management and administration of a limited partnership.

(20) "Market Value" means the closing bid price multiplied by the measure to be valued (e.g., an issuer's market value of public float is equal to the closing bid price multiplied by an issuer's public float).

(21) "Member" means a broker or dealer admitted to membership in Nasdaq.

(22) "Nasdaq market maker" means a dealer that, with respect to a security, holds itself out (by entering quotations in Nasdaq) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

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

(24) "Nasdaq National Market security" or "NNM security" means any authorized security which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series and is subject therefore to a transaction reporting plan approved by the Commission; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420, and has been designated therefore as a national market system security pursuant to SEC Rule 11Aa2-1.

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

(26) "Nasdaq SmallCap Market security" or "SCM security" means any authorized security in The Nasdaq SmallCap Market which (1) satisfies all applicable requirements of the Rule 4300 Series other than a Nasdaq National Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(27) "Nasdaq" is an electronic securities exchange comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. This market also provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. Nasdaq consists of two distinct market tiers: the "Nasdaq National Market" or "NNM," and "The Nasdaq SmallCap Market" or "SCM."

(28) "Net Tangible Assets" shall mean total assets (including the value of patents, copyrights and trade marks but excluding the value of goodwill) less total liabilities.

(29) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's Nasdaq symbol.

(30) "Reported security" means an equity security for which quotations are entered into the Consolidated Quotations Service.

(31) "Round lot holder" means a holder of a normal unit of trading.

(32) "SEC Rule 100," "SEC Rule 101," "SEC Rule 103," and "SEC Rule 104" mean the rules adopted by the Commission under Regulation M, and any amendments thereto.

(33) "Solicitation expenses" means direct marketing expenses incurred by a member in connection with a limited partnership rollup transaction, such as telephone calls, broker/dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

(34) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(35) "Transaction costs" means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

(36) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of NASD Regulation, Inc. 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 4614, 4619, and 4623.

(b) For purposes of Rules 4614, 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases," "passive market maker," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

Selected NASD Notices to Members: 94-70, 95-64, 95-82.

4300. QUALIFICATION REQUIREMENTS FOR NASDAQ SECURITIES

Nasdaq is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature, by being included in Nasdaq, are publicly recognized as sharing these important objectives of Nasdaq.

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, will exercise broad discretionary authority over the initial and continued inclusion of securities in Nasdaq in order to maintain the quality of and public confidence in its market. Under such broad discretion and in addition to its authority under Rule 4330(a), Nasdaq may deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

IM-4300. Interpretive Material Regarding Future Priced Securities**Summary**

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay in setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue \$10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into \$10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is \$5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is \$1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several Nasdaq Rules, the issuance of Future Priced Securities could result in a failure to comply with Nasdaq listing standards and the concomitant delisting of the issuer's securities from Nasdaq. Nasdaq's experience has been that issuers do not always appreciate this potential consequence. Nasdaq Rules that bear upon the continued listing qualification of an issuer and that must be considered when issuing Future Priced Securities include:

1. the shareholder approval rules
2. the voting rights rules
3. the bid price requirement
4. the listing of additional shares rules
5. the change in control rules
6. Nasdaq's discretionary authority rules

It is important for issuers to clearly understand that failure to comply with any of these rules could result in the delisting of the issuer's securities.

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice should contact the Nasdaq Office of General Counsel at (202) 728-8294 or Listing Qualifications Department at (301) 978-8008. Nasdaq will provide an issuer with a written interpretation of the application of Nasdaq Rules to a specific transaction, upon request of the issuer.

How the Rules Apply

Shareholder Approval

Rule 4310(c)(25)(G)(i) relating to Nasdaq SmallCap issuers and Rule 4460(i)(1) relating to Nasdaq National Market issuers provide, in part:

Each issuer shall require shareholder approval ... prior to the issuance of designated securities ... in connection with a transaction other than a public offering involving ... the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.^v

When Nasdaq staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained prior to the issuance of the Future Priced Security. Issuers should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20 percent or more of the common stock or voting power outstanding before the issuance of the Future Priced Security^{vi}; or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the

issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rules 4310(c)(25)(G)(i)(b) and 4460(i)(1)(B) if the issuance will result in a change of control.

Voting Rights

Rule 4310(c)(21) provides:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

Rule 4460(j) and IM-4310 also provide rules relating to voting rights of Nasdaq issuers.

Under the voting rights rules, an issuer cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the company based on the company's overall book or market value at the time of the issuance of the Future Priced Security. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the company based on the company's overall book or market value at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, shareholders can not otherwise agree to permit a voting rights violation by the issuer. Because a violation of the voting rights requirement can result in delisting of the issuer's securities from Nasdaq, careful attention must be given to this issue to prevent a violation of the rule.

The Bid Price Requirement

Rules 4310(c)(4) and 4450(a)(5) provide that for an issue to be eligible for continued inclusion on Nasdaq, the minimum bid price per share shall be \$1.

In addition, Rule 4450(b)(4), which applies only to issues qualifying for the Nasdaq National Market under maintenance standard 2, provides that for an issue to remain eligible for continued inclusion in the Nasdaq National Market, the minimum bid price shall be \$5.

The bid price requirement establishes a minimum bid price for issues trading on Nasdaq. An issue is subject to delisting from Nasdaq if its bid price falls below \$1. In addition, certain issues are subject to delisting from the Nasdaq National Market if their bid price falls below \$5.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement.^{vii}

Listing of Additional Shares

Rule 4310(c)(17) provides:

The issuer shall be required to file on a form designated by Nasdaq notification of ... the issuance of additional shares of any class of securities included in Nasdaq ... no later than 15 calendar days prior to ... the issuance of additional shares.

Issuers should be cognizant that under this rule notification is required at least 15 days prior to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on Nasdaq. Failure to provide such notice can result in an issuer's removal from Nasdaq.

Public Interest Concerns

Rule 4300 provides:

Nasdaq is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature, by being included in Nasdaq, are publicly recognized as sharing these important objectives of Nasdaq.

Rule 4330(a) provides:

Nasdaq may ... deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or

terminate the inclusion of an otherwise qualified security if ... Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

The returns on Future Priced Securities may become excessive compared with those of public investors in the issuer's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under Rules 4300 and 4330(a). In addition to the demonstrable business purpose of the transaction, other factors that Nasdaq staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the issuer's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the issuer; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

Change of Control and Change in Financial Structure

Rule 4330(f) provides:

Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a merger or consolidation that results in a change of control if there is also a change in either the business or the financial structure of the issuer.^{viii} It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a change of control in a

deemed merger or consolidation with the holders of the Future Priced Securities. In addition, the issuance of the Future Priced Security and the large increase in the number of common shares outstanding after conversion of the Future Priced Security may be viewed as a change in financial structure. In such event, an issuer would be required to re-apply for initial inclusion and satisfy all initial inclusion requirements.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) A security other than a security distributed in connection with an initial public offering shall be considered for inclusion in Nasdaq provided that it is:

- (1) registered pursuant to Section 12(g)(1) of the Act; or
- (2) registered pursuant to Section 12(b) of the Act; or
- (3) issued by an insurance company pursuant to Section 12(g)(2)(G) of the Act; or
- (4) issued by an investment company registered under the Investment Company Act of 1940, provided that the issuer or underwriter of, or any dealer in, the security is not currently engaged in a distribution of such security which subjects such issuer, underwriter or dealer to the provisions of Section 22(d) of the Investment Company Act, and provided further that transactions in such shares, other than redemptions or repurchases by or on behalf of the issuer, are exempted from or not subject to SEC Rule 22c-1 adopted under the Investment Company Act.

(b) (1) A new issue offered on a firm commitment basis shall be considered for inclusion on the day that its registration statement is declared effective by the Commission. A new issue offered on a best efforts basis shall be considered for inclusion upon the closing of the offering. Qualification under this paragraph (b)(1) shall automatically terminate 120 days after the last day of the issuer's fiscal year during which the registration statement became effective.

(2) A new issue for which a registration statement is not required to be filed with the Commission under Section 3(a) of the Securities Act of 1933 shall be considered for inclusion upon the effectiveness of its registration statement or equivalent document filed with the appropriate regulatory authority if the offering is conducted on a firm commitment basis or, if conducted on a best efforts basis, at the closing of the offering. Qualification under this paragraph (b)(2) shall automatically terminate 120 days after the effective date of the offering.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and

unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

- (1) For initial inclusion, the issue shall have three registered and active market makers, and for continued inclusion, the issue shall have two registered and active market makers, one of which may be a market maker entering a stabilizing bid.
- (2) (A) For initial inclusion, the issuer shall have:
 - (i) net tangible assets of \$4 million;
 - (ii) market capitalization of \$50 million; or
 - (iii) net income of \$750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.(B) For continued inclusion, the issuer shall maintain:
 - (i) net tangible assets of \$2 million;
 - (ii) market capitalization of \$35 million; or
 - (iii) net income of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.
- (3) For initial inclusion, the issuer shall have an operating history of at least one year or market capitalization of \$50 million.
- (4) For initial inclusion, common or preferred stock shall have a minimum bid price of \$4 per share. For continued inclusion the minimum bid price per share shall be \$1.
- (5) In the case of a convertible debt security, for initial inclusion, there shall be a principal amount outstanding of at least \$10 million. For continued inclusion, there shall be a principal amount outstanding of at least \$5 million.
- (6) In the case of common stock, there shall be at least 300 round lot holders of the security. An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.
- (7) In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion such shares shall have a market value of at least \$5 million. For continued inclusion such shares shall have a market value of at least \$1 million. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(8) (A) A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) A failure to meet the continued inclusion requirements for minimum bid price and market value of public float shall be determined to exist only if the deficiency for the applicable criterion continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(C) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(9) (A) In the case of rights and warrants, for initial inclusion only, there shall be at least 100,000 issued and the underlying security shall be included in Nasdaq or listed on another national securities exchange.

(B) In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time), for initial inclusion only, there shall be at least 100,000 issued and the underlying security shall be included in Nasdaq or listed on another national securities exchange.

(C) In the case of index warrants, the criteria established in the Rule 4400 Series for Nasdaq National Market securities shall apply.

(10) (A) In the case of units, all component parts shall meet the requirements for initial and continued inclusion.

(B) In the case of units, the minimum period for inclusion of the

units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

(11) The security shall not currently be suspended from trading by the Commission pursuant to Section 12(k) of the Act.

(12) The issuer shall certify, at or before the time of qualification, that all applicable inclusion criteria have been satisfied.

(13) The issuer shall pay all applicable fees described in the Rule 4500 Series.

(14) The issuer shall file with Nasdaq three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. An issuer that is not required to file reports with the Commission shall file with Nasdaq three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with Nasdaq on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with Nasdaq shall contain audited financial statements.

(15) The issuer shall provide full and prompt responses to requests by Nasdaq for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq.

(16) Except in unusual circumstances, the issuer shall make prompt disclosure to the public through the news media of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's Market Watch Department.^{ix*}

(17) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers or directors without shareholder approval; or

(B) issuing securities that may potentially result in a change of control of the issuer; or

(C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the company to be acquired or in the consideration to be paid; or

(D) entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

(18) The issuer of any class of securities included in Nasdaq shall notify Nasdaq promptly in writing of any change in the issuer's transfer agent or registrar.

(19) The issuer shall comply with any obligation of any person regarding filing or disclosure of information material to the issuer or the security, whether such obligation arises under the federal securities laws and the rules and regulations promulgated thereunder or other applicable federal or state statutes or rules.

(20) The issuer shall notify Nasdaq promptly in writing of any change in the general character or nature of its business and any change in the address of its principal executive offices. The issuer also shall file on a form designated by Nasdaq notification of any corporate name change no later than 10 days after the change.

(21) Voting Rights -- Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

Cross Reference - IM-4310, Voting Rights Policy

(22) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities law and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

(23) (A) For initial inclusion, a security, except for the security of a Canadian issuer, shall have a CUSIP number identifying the securities

included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act ("securities depository" or "securities depositories"), in accordance with the rules and procedures of such securities depository; except that this subparagraph shall not apply to a security if the terms of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

(B) A security depository's inclusion of a CUSIP number identifying a security in its file of eligible issues does not render the security "depository eligible" under Rule 11310 until:

(i) 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 Nasdaq; or

(ii) 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 Nasdaq, 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 Nasdaq.

(24) The issuer shall file, on a form designated by Nasdaq no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities included in Nasdaq that exceeds 5% of the amount of securities of the class outstanding.

(25) Corporate Governance Requirements -- Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or another exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or another exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security, if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(A) Distribution of Annual and Interim Reports

(i) Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with Nasdaq at the time it is distributed to shareholders.

(ii) Each issuer which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(iii) Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to shareholders differs from that filed with the regulatory authority, the issuer shall file one copy of the report to shareholders with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

(B) Independent Directors

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4310(c)(26)(B).

(C) Shareholder Meetings

Each issuer shall hold an annual meeting of shareholders and shall provide notice to Nasdaq.

(D) Quorum

Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the company's common voting stock.

(E) Solicitation of Proxies

Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to Nasdaq.

(F) Conflicts of Interest

Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.

(G) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. when a stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g. ESOPs). In a case where the shares are issued to a person not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company, shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval;

b. when the issuance or potential issuance will result in a change of control of the issuer;

c. in connection with the acquisition of the stock or assets of another company if:

1. any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

2. where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash:

A. the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

B. the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares or common stock outstanding before the issuance of the stock or securities; or

d. in connection with a transaction other than a public offering involving:

1. the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20%

or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii) Exceptions may be made upon application to Nasdaq when:

a. the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

b. reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the Audit Committee or a comparable body of the Board of Directors has expressly approved the exception.

(iii) Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this subparagraph (25)(G). Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

(iv) Voting power outstanding as used in this Rule refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

(v) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a

substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(vi) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal in person or by proxy.

(26) Audit Committee

(A) Audit Committee Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] oversee the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a

company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers – Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(27) Listing Agreement -- Each issuer shall execute a Listing Agreement in the form designated by Nasdaq.

(28) Peer Review

(A) Each issuer must be audited by an independent public accountant that:

(i) has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or

(ii) is enrolled in a peer review program and within 18 months receives a peer review, that meets acceptable guidelines.

(B) The following guidelines are acceptable for the purposes of subparagraph (c)(27):

(i) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(ii) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the CPA's SEC Practice Section Reference Manual; and

(iii) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow Nasdaq access to those working papers.

(29) If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a securities depository registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program.

(d) Nasdaq issuers which distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders. Nasdaq issuers are also encouraged to consider additional technological methods to communicate such information to shareholders in a timely and less costly manner as such technology becomes available.

Selected NASD Notices to Members: 87-32, 88-63, 90-16, 90-30, 95-55.

IM-4310. Voting Rights Policy

The following Voting Rights Policy is based upon, but more flexible than, former SEC Rule 19c-4. Accordingly, Nasdaq will permit corporate actions or issuances by Nasdaq issuers that would have been permitted under Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, Nasdaq will consider, among other things, the economics of such actions or issuances and the voting rights being granted. Nasdaq's interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Nasdaq issuers change over time. The text of the Nasdaq Voting Rights Policy is as follows:

Issuers with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and issuers with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

Consultation with Nasdaq

Violation of the Nasdaq Voting Rights Policy could result in the loss of an issuer's Nasdaq or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under Rule 19c-4, it is extremely important that Nasdaq issuers communicate their intentions to their Nasdaq representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. Nasdaq urges issuers of securities included in Nasdaq not to assume, without first discussing the matter with the Nasdaq staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to Nasdaq for review prior to formal filing.

Review of Past Voting Rights Activities

In reviewing an application for initial qualification for inclusion of a security in Nasdaq, Nasdaq will review the issuer's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the issuer's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, Nasdaq may take any appropriate action, including the denial of the application or the placing of restrictions on such qualification for inclusion. Nasdaq will also review whether an issuer seeking initial qualification for inclusion of a security in Nasdaq has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, Nasdaq will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

Non-U.S. Companies

Nasdaq will accept any action or issuance relating to the voting rights structure of a non- U.S. issuer that is in compliance with Nasdaq's requirements for domestic companies or that is not prohibited by the issuer's home country law.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of

a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a) A security of a foreign issuer, an ADR or similar security issued in respect of a security of a foreign issuer, other than a newly issued security, shall be considered for inclusion provided that it is registered pursuant to Section 12(b) of the Act.

(b) A new issue of foreign securities conducted on a firm commitment basis shall be considered for inclusion on the day that its registration statement is declared effective by the Commission. A new issue of foreign securities conducted on a "best efforts" basis shall be considered for inclusion upon the closing of the offering. Qualification under this paragraph shall automatically terminate 120 days after the last day of the issuer's fiscal year during which the registration statement became effective.

(c) A foreign issuer whose securities or underlying ADR's were included in Nasdaq on or before October 5, 1983, and whose securities are exempt from registration under Section 12(g) of the Act pursuant to SEC Rule 12g3-2(b), shall continue to be included in Nasdaq, provided that all applicable requirements of SEC Rule 12g3-2(b) are met.

(d) Notwithstanding its exemption from registration pursuant to SEC Rule 12g3-2(b), a foreign security or ADR shall not be qualified for inclusion if:

(1) the issuer of the security or the security underlying the ADR fails to make available to its shareholders and Nasdaq on a timely basis an annual balance sheet and statement of operations prepared in accordance with the generally accepted accounting practices of the issuer's country of domicile, including certification, if applicable; or

(2) the principal marketplace of the issuer's securities fails to coordinate regulatory activities with Nasdaq in a manner sufficient to assure a fair and orderly market in the security and the protection of investors and the public interest.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1) For initial inclusion, the issue shall have three registered and active market makers, and for continued inclusion, the issue shall have two registered and active market makers. A failure to meet the continued inclusion requirement for number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the market maker requirements.

(2) (A) For initial inclusion, the issuer shall have:

(i) net tangible assets of U.S. \$4 million;

(ii) market capitalization of U.S. \$50 million; or

(iii) net income of U.S. \$750,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(B) For continued inclusion, the issuer shall maintain:

(i) net tangible assets of U.S. \$2 million;

(ii) market capitalization of U.S. \$35 million; or

(iii) net income of U.S. \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(C) An issuer's net tangible assets will be determined on the basis of a balance sheet prepared in accordance with U.S. generally accepted accounting principles or those accompanied by detailed schedules quantifying the differences between U.S. generally accepted accounting principles and those of the issuer's country of domicile.

(D) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(3) In the case of a convertible debt security, for initial inclusion, there shall be a principal amount outstanding of at least U.S. \$10 million. For continued inclusion, there shall be a principal amount outstanding of at least U.S. \$5 million.

(4) In the case of foreign shares, there shall be at least 300 round lot holders of the security. An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.

(5) In the case of foreign shares, there shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6) In the case of rights, warrants and ADRs for initial inclusion only, at least 100,000 shall be issued.

(7) In the case of rights and warrants, the underlying security shall be included in Nasdaq or listed on another national securities exchange.

(8) In the case of units, all component parts shall meet the requirements for initial and continued inclusion.

(9) The security shall not currently be suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the issuer's country of domicile.

(10) The issuer shall certify, at or before the time of qualification, that all applicable inclusion criteria have been satisfied.

(11) The issuer shall pay all applicable fees described in the Rule 4500 Series.

(12) The issuer shall file with Nasdaq three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission.

(13) The issuer shall provide full and prompt responses to requests by Nasdaq for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq.

(14) Except in unusual circumstances, the issuer shall make prompt disclosure to the public in the United States through international wire services or similar disclosure media of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions and shall, prior to the release of the information, provide notice of such disclosure to Nasdaq.^{x*}

(15) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers or directors without shareholder approval; or

(B) issuing securities that may potentially result in a change of control of the issuer; or

(C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the company to be acquired or in the consideration to be paid; or

(D) entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

(16) The issuer of any class of securities included in Nasdaq, except for American Depositary Receipts, shall notify Nasdaq promptly in writing of any change in the issuer's transfer agent or registrar.

(17) The issuer shall comply with any obligation of any person regarding filing or disclosure of information material to the issuer or the security, whether such obligation arises under the securities laws of the United States or the issuer's country of domicile, or other applicable federal or state statutes or rules.

(18) The issuer shall notify Nasdaq promptly in writing of any change in the general character or nature of its business and any change in the address of its principal executive offices. The issuer also shall file on a form designated by Nasdaq notification of any corporate name change no later than 10 days after the change.

(19) Voting Rights -- Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

Cross Reference - IM-4310, Voting Rights Policy

(20) The issuer shall file, on a form designated by Nasdaq no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities included in Nasdaq that exceeds 5% of the amount of securities of the class outstanding.

(21) Corporate Governance Requirements -- No provisions of this subparagraph or of subparagraphs (22) and (24) shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or another exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or another exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest

(A) Distribution of Annual and Interim Reports

(i) Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with Nasdaq at the time it is distributed to shareholders.

(ii) Each issuer which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(iii) Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to shareholders differs from that filed with the regulatory authority, the issuer shall file one copy of the report to shareholders with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

(B) Independent Directors

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4320(e)(22)(B).

(C) Shareholder Meetings

Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to Nasdaq.

(D) Quorum

Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the company's common voting stock.

(E) Solicitation of Proxies

Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to Nasdaq.

(F) Conflicts of Interest

Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.

(G) Shareholder Approval

(i) Each issuer shall require shareholder approval of a plan or arrangement under subparagraph a. below, or prior to the issuance of designated securities under subparagraph b., c., or d. below:

a. when a stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g. ESOPs). In a case where the shares are issued to a person not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company, shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval;

b. when the issuance or potential issuance will result in a change of control of the issuer;

c. in connection with the acquisition of the stock or assets of another company if:

1. any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

2. where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash:

A. the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

B. the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares or common stock outstanding before the issuance of the stock or securities; or

d. in connection with a transaction other than a public offering involving:

1. the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

2. the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(ii) Exceptions may be made upon application to Nasdaq when:

a. the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

b. reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the Audit Committee or a comparable body of the Board of Directors has expressly approved the exception.

(iii) Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this subparagraph (21)(G). Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

(iv) Voting power outstanding as used in this Rule refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

(v) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(vi) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal in person or by proxy.

(22) Audit Committee

(A) Audit Committee Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] oversee the independence of the outside auditor; and;

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to

read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers – Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(23) Listing Agreement

Each issuer shall execute a Listing Agreement in the form designated by Nasdaq.

(24) Peer Review

(A) Each issuer must be audited by an independent public accountant that:

(i) has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed;
or

(ii) is enrolled in a peer review program and within 18 months receives a peer review, that meets acceptable guidelines.

(B) The following guidelines are acceptable for purposes of subparagraph (e)(23):

(i) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(ii) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and

(iii) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow Nasdaq access to those working papers.

(25) If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a securities depository registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program.

(f) Nasdaq issuers which distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders. Nasdaq issuers are also encouraged to consider additional technological methods to communicate such information to shareholders in a timely and less costly manner as such technology becomes available.

Selected NASD Notices to Members: 83-19.

Cross Reference - IM-4310, Voting Rights Policy

4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

(a) Nasdaq may, in accordance with the Rule 4800 Series, deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if:

(1) an issuer files for protection under any provision of the federal bankruptcy laws;

(2) an issuer's independent accountants issue a disclaimer opinion on financial statements required to be certified; or

(3) Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

(b) If Nasdaq determines to suspend or terminate a security's inclusion because of noncompliance with the provisions of this Rule 4000 Series, Nasdaq will notify the issuer prior to suspension or termination or as soon as practicable thereafter. This notification constitutes a Staff Determination for purposes of Rule 4815 and the issuer may request review of the decision under the Rule 4800 Series.

(c) Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. Information requested pursuant to this subparagraph shall be submitted within a reasonable period.

(d) Nasdaq may make exceptions to the application of the criteria contained in Rule 4310 or Rule 4320 where it deems it appropriate.

(e) A security that has been suspended shall be required, prior to re-inclusion, to comply with requirements for continued inclusion. A security that has been terminated shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion.

(f) Securities issued in connection with the merger, consolidation, or other type of acquisition of at least one issuer of qualifying securities shall be promptly included in Nasdaq, provided that the conditions of Rule 4310(c) or Rule 4320(e) for securities that have already been included are satisfied. Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.

Selected NASD Notices to Members: 85-20, 85-49, 85-72, 87-46.

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.

4410. Applications for Designation

(a) Application for designation shall be on a form supplied by Nasdaq and signed by a corporate officer of the issuer. Compliance with the designation criteria will be determined on the basis of information filed with the appropriate regulatory authority and the records of Nasdaq as of the application date. Nasdaq may require the issuer to submit such other information as is relevant to a determination of designation as a national market system security, including information required by paragraph (c) below.

(b) Designation of a security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation shall be determined by Nasdaq giving due regard to the requirements of Nasdaq, the media and market makers. Effectiveness of designation may be delayed upon written request by the issuer. An issuer which has been determined to be qualified but is pending effectiveness shall not be required to meet the designation criteria prior to effectiveness.

(c) Nasdaq shall review the issuer's past corporate governance activities when the issuer's securities were traded on or after withdrawal from Nasdaq National Market or another securities exchange which imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for designation, or the denial of designation of a security, if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this paragraph (c) shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(d) Nasdaq may make exceptions to the criteria contained in the Rule 4400 Series where it deems appropriate.

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), or (g) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a) Entry Standard 1

- (1) The issuer of the security had annual pre-tax income of at least \$1,000,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.
- (2) There are at least 1,100,000 publicly held shares.
- (3) The market value of publicly held shares is at least \$8 million.
- (4) The bid price per share is \$5 or more.
- (5) The issuer of the security has net tangible assets of at least \$6 million.
- (6) The issuer has a minimum of 400 round lot shareholders.
- (7) There are at least three registered and active market makers with respect to the security.

(b) Entry Standard 2

- (1) The issuer of the security has net tangible assets of at least \$18 million.
- (2) There are at least 1,100,000 publicly held shares.
- (3) The market value of publicly held shares is at least \$18 million.
- (4) The bid price per share is \$5 or more.
- (5) There are at least three registered and active market makers with respect to the security.
- (6) The issuer has a two-year operating history.
- (7) The issuer has a minimum of 400 round lot shareholders.

(c) Entry Standard 3

An issuer designated under this paragraph does not also need to be in compliance with the quantitative criteria for initial inclusion in the Rule 4300 series.

- (1) There are at least 1,100,000 publicly held shares.
- (2) The market value of publicly held shares is at least \$20 million.

- (3) The bid price per share is \$5 or more.
- (4) There are at least four registered and active market makers with respect to the security.
- (5) The issuer has a minimum of 400 round lot shareholders.
- (6) The issuer has:
 - (A) a market capitalization of \$75 million; or
 - (B) total assets and total revenue of \$75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

(d) Rights and Warrants

(1) Rights or warrants to purchase designated securities may be designated if they substantially meet the above criteria; provided, however, that they shall not be subject to the publicly held shares, market value of publicly held shares, or bid price requirements and shall not be required to meet the criteria set forth in paragraphs (a)(2), (b)(2), or (c)(1) if immediately after the distribution, there are at least 450,000 rights or warrants outstanding.

(2) An index warrant may be designated for inclusion if it substantially meets the following criteria:

- (A) The minimum public distribution shall be at least 1 million warrants.
- (B) The minimum number of public holders shall be at least 400.
- (C) The aggregate market value of the outstanding index warrants shall be at least \$4 million.
- (D) The issuer of the index warrants must have a minimum tangible net worth in excess of \$150 million.
- (E) The term of the index warrant shall be for a period from one to five years.
- (F) Limitations on Issuance -- Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, Nasdaq will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the

issuer and its affiliates combined that are listed for trading on Nasdaq or another national securities exchange exceeds 25% of the issuer's net worth.

(G) A.M. Settlement -- The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.

(H) Automatic Exercise -- All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by Nasdaq (if such warrant issue has not been listed on another national securities exchange).

(I) Foreign Country Securities -- In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

(J) Changes in Number of Warrants Outstanding -- Issuers of stock index warrants either will make arrangements with warrant transfer agents to advise Nasdaq immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with Nasdaq no later than 4:30 p.m. Eastern Time, on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by Nasdaq from time to time.

(K) Only eligible broad-based indexes can underlie index warrants. For purposes of this subparagraph, eligible broad-based indexes shall include those indexes approved by the Commission to underlie index

warrants or index options traded on Nasdaq or another national securities exchange.

Any index warrant designated pursuant to this paragraph shall not be required to meet the requirements of Rule 4430, 4440, or 4450. Nasdaq may apply additional or more stringent criteria as necessary to protect investors and the public interest.

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the date of application of the issuer. Determinations of beneficial ownership for purposes of paragraphs (a)(2), (b)(2), and (c)(1) shall be made in accordance with SEC Rule 13d-3. In the case of American Depositary Receipts, the computations required by paragraphs (a)(1), (a)(5), and (b)(1) shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. In the case of American Depositary Receipts, the underlying security will be considered when determining the computations required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (b)(1), (b)(2), (b)(3), (b)(6), (b)(7), (c)(1), (c)(2), (c)(5), and (c)(6) of this rule.

(f) Other Securities

(1) Nasdaq will consider designating any security not otherwise covered by the criteria in paragraphs (a), (b), (c), or (d) of this Rule, provided the instrument is otherwise suited to trade through the facilities of Nasdaq. Such securities will be evaluated for designation against the following criteria:

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders.

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units.

(D) The aggregate market value/principal amount of the security

shall be at least \$4 million.

(2) Issuers of securities designated pursuant to this paragraph (e) must be listed on the Nasdaq National Market or the New York Stock Exchange (NYSE) or be an affiliate of a company listed on the Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

(3) Prior to the commencement of trading of securities designated pursuant to this paragraph, Nasdaq will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding Nasdaq member firm compliance responsibilities and requirements when handling transactions in such securities.

(g) Nasdaq will consider designating as Nasdaq National Market securities Selected Equity-linked Debt Securities (SEEDS) that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards

(A) The issuer of a SEEDS must be an entity that:

(i) is listed on the Nasdaq National Market or the New York Stock Exchange (NYSE) or is an affiliate of a company listed on the Nasdaq National Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) has a minimum net worth of \$150 million.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Nasdaq National Market or another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) a minimum public distribution of one million SEEDS;

(B) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations, there is no minimum

number of holders;

(C) a minimum market value of \$4 million; and

(D) a term of two to seven years; provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

(3) Minimum Standards Applicable to the Linked Security

An equity security on which the value of the SEEDS is based must:

(A) (i) have a market capitalization of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;

(ii) have a market capitalization of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or

(iii) have a market capitalization of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

(B) be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq National Market or another national securities exchange and be subject to last sale reporting; and

(C) be issued by:

(i) a U.S. company; or

(ii) a non-U.S. company (including a company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:

a. Nasdaq or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);

b. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and

other related non-U.S. securities occurring in the U.S. market and in markets with which Nasdaq or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of designation; or

c. 1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and

3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

d. If the underlying security to which the SEEDS is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

(4) Limits on the Number of SEEDS Linked to a Particular Security

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of designation;^{xi*} (ii) three

percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of designation; (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of designation.

(B) If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then Nasdaq, with the concurrence of the staff of the Division of Market Regulation of the Commission, will evaluate the maximum percentage of SEEDS that may be issued on a case-by-case basis.

(5) Prior to the commencement of trading of a particular SEEDS designated pursuant to this subsection, Nasdaq will distribute a circular to the membership providing guidance regarding Nasdaq member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.

Selected NASD Notices to Members: 95-82.

4430. Limited Partnership Rollup Designation Criteria

In addition to meeting the quantitative criteria for Nasdaq National Market inclusion, an issuer that is formed as a result of a limited partnership rollup transaction, as defined in Rule 4200, must meet the criteria set forth below in order to be designated:

(a) The limited partnership rollup transaction must provide for the right of dissenting limited partners:

(1) 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 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:

(A) limited partnership rollup transactions which utilize debt instruments as compensation must provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest equal to at least 120% of the applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986;

(B) limited partnership rollup transactions which utilize unsecured

debt instruments as compensation, in addition to the requirements of subparagraph (A), above, must limit total leverage to 70% of the appraised value of the assets;

(C) all debt securities must have a term no greater than 8 years and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets previously owned by the partnership entities subject to the limited partnership rollup transaction or any part thereof; and

(D) freely-tradeable securities utilized as compensation to dissenting limited partners must be issued by a company listed on a national securities exchange or 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 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 Rule;

(2) to receive or retain a security with substantially the same terms and conditions as the security originally held. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

(A) there is no material adverse change to dissenting limited partners' rights with respect to the business plan or the investment, distribution and liquidation policies of the limited partnership; and

(B) the dissenting limited partners receive substantially the same rights, preferences and priorities as they had pursuant to the security originally held; or

(3) to receive other comparable rights including, but not limited to:

(A) approval of the limited partnership rollup transaction by 75%

of the outstanding units of each of the individual participating limited partnerships and the exclusion of any individual limited partnership from the limited partnership rollup transaction which fails to reach the 75% threshold. The third-party appointed to tabulate votes and dissents pursuant to paragraph (b)(2)(D) of this Rule shall submit the results of such tabulation to Nasdaq.

(B) review of the limited partnership rollup transaction by an independent committee of persons not affiliated with the general partner(s) or sponsor. Whenever utilized, the independent committee:

(i) shall be approved by a majority of the outstanding securities of each of the participating partnerships;

(ii) shall have access to the books and records of the partnerships;

(iii) shall prepare a report to the limited partners subject to the limited partnership rollup transaction that presents its findings and recommendations, including any minority views;

(iv) shall have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction on behalf of the limited partners;

(v) shall not deliberate for a period longer than 60 days, although extensions will be permitted if unanimously agreed upon by the members of the independent committee or if approved by Nasdaq;

(vi) may be compensated and reimbursed by the limited partnerships subject to the limited partnership rollup transaction and shall have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense provided the fees are reasonable; and

(vii) shall be entitled to indemnification to the maximum extent permitted by law from the limited partnerships subject to the limited partnership rollup transaction from claims, causes of action or lawsuits related to any action or decision made in furtherance of their responsibilities; provided, however, that general partners or sponsors may also agree to indemnify the independent committee; or

(C) any other comparable rights for dissenting limited partners

proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor demonstrates to the satisfaction of Nasdaq or, if Nasdaq determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

(b) Regardless of whether a limited partnership rollup transaction meets the requirements set forth in paragraph (a) above, a limited partnership rollup transaction will not be designated:

(1) if the general partner(s):

(A) converts an equity interest in any limited partnership(s) subject to a limited partnership rollup transaction for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity (provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89-12 may be converted);

(B) fails to follow the valuation provisions, if any, in the limited partnership agreements of the subject limited partnerships when valuing their limited partnership interests; or

(C) utilizes a future value of their equity interest rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with paragraph (a)(1) of this Rule, when determining their interest in the new entity;

(2) as to voting rights, if:

(A) the voting rights in the entity resulting from a limited partnership rollup transaction do not generally follow the original voting rights of the limited partnerships participating in the limited partnership rollup transaction; provided, however, that changes to voting rights may be effected if Nasdaq determines that such changes are not unfair or if the changes are approved by an independent committee;

(B) a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors, trustee, or similar governing entity, depending on the form of entity and to the extent not inconsistent with state law, vote to:

(i) amend the limited partnership agreement, articles of incorporation or by-laws, or indenture;

(ii) dissolve the entity;

(iii) remove the general partner, board of directors, trustee or similar governing entity, and elect a new general partner, board of directors, trustee or similar governing entity; or

(iv) approve or disapprove the sale of substantially all of the assets of the entity;

(C) the general partner(s) or sponsor(s) proposing a limited partnership rollup transaction do not provide each person whose equity interest is subject to the transaction with a document which instructs the person on the proper procedure for voting against or dissenting from the rollup; or

(D) the general partner(s) or sponsor(s) does not utilize an independent third party to receive and tabulate all votes and dissents in connection with the limited partnership rollup transaction, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs;

(3) as to transaction costs, if:

(A) transaction costs of a rejected limited partnership rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

(i) the general partner(s) or sponsor(s) bear all transaction costs in proportion to the total number of abstentions and votes to reject the limited partnership rollup transaction; and

(ii) limited partners bear transaction costs in proportion to the number of votes to approve the limited partnership rollup transaction; or

(B) individual limited partnerships that do not approve a limited partnership rollup transaction are required to pay any of the transaction costs, and the general partner or sponsor is not required to pay the transaction costs on behalf of the non-approving limited partnerships, in a limited partnership rollup transaction in which one or more limited partnerships determines not to approve the transaction, but where the transaction is consummated with respect to one or more approving limited partnerships; or

(4) as to fees of general partners, if:

(A) general partners are not prevented from receiving both unearned management fees discounted to a present value (if such fees were not previously provided for in the limited partnership agreement and disclosed to limited partners) and new asset-based fees;

(B) property management fees and other general partner fees are inappropriate, unreasonable and more than, or not competitive with, what would be paid to third parties for performing similar services; or

(C) changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

4440. Registration Standards

(a) In addition to meeting the quantitative criteria and the limited partnership rollup criteria, if applicable, for Nasdaq National market inclusion, the issue must also be:

(1) registered under Section 12(g)(1) of the Act; or

(2) issued by an insurance company meeting the conditions of Section 12(g)(2)(G) of the Act; or

(3) registered under the Securities Act of 1933 and issued by a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940;

(4) an American Depositary Receipt issued against the equity security of a foreign issuer if such equity securities are registered pursuant to Section 12 of the Act; or

(5) registered under Section 12(b) of the Act and listed on a national securities exchange, or admitted to unlisted trading privileges on an exchange, provided that:

(A) No rule, stated policy or practice of such exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction in such security otherwise than on such exchange; and

(B) such exchange shall permit Nasdaq market makers telephone access to exchange trading facilities with respect to transactions in NNM securities to the same extent that exchange market makers are permitted

access to Nasdaq market makers; and

(C) transaction reports in such security are not collected, processed and made available pursuant to the plan submitted to the Commission pursuant to SEC Rule 11Aa3-1 under the Act (the CTA Plan), which plan was declared effected as of May 17, 1974.

(b) Foreign securities and American Depositary Receipts where either the issuer is required to file reports pursuant to Section 15(d) of the Act or the security is exempt from registration under Section 12(g) of the Act by reason of the applicability of SEC Rule 12g3-2(b) are not eligible for designation in the Nasdaq National Market.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1 - Common Stock, Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

- (1) 750,000 shares publicly held;
- (2) Market value of publicly held shares of \$5 million;
- (3) The issuer has net tangible assets of at least \$4 million;
- (4) 400 shareholders of round lots; and
- (5) Minimum bid price per share of \$1.

(b) Maintenance Standard 2 - Common Stock, Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

- (1) The issuer has:
 - (A) a market capitalization of \$50 million; or
 - (B) total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

- (2) 1,100,000 shares publicly held;
- (3) Market value of publicly held shares of \$15 million;
- (4) Minimum bid price per share of \$5;
- (5) 400 shareholders of round lots; and
- (6) At least four registered and active market makers.

(c) Other Securities Designated Pursuant to Rule 4420(f)

The aggregate market value or principal amount of publicly-held units must be at least \$1 million.

(d) Rights and Warrants

Common stock of issuer must continue to be designated

(e) Market Makers

At least two registered and active market makers, except that an issue must have at least four registered and active market makers to satisfy Maintenance Standard 2 under paragraph (b) of this rule. A failure to meet the continued inclusion requirements for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(f) Bankruptcy and/or Liquidation

Should an issuer file under any of the sections of the Bankruptcy Act or announce that liquidation has been authorized by its board of directors and that it is committed to proceed, Nasdaq may suspend or terminate the issuer's securities unless it is determined that the public interest and the protection of investors would be served by continued designation.

(g) American Depositary Receipts

In the case of American Depositary Receipts, the underlying security will be considered when determining the ADR's qualification for continued inclusion on Nasdaq under paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), and (b)(5) of this rule.

Selected NASD Notices to Members: 94-98.

4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a) Applicability

No provisions of this Rule shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

(b) Distribution of Annual and Interim Reports

(1) Each Nasdaq National Market issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with Nasdaq at the time it is distributed to shareholders.

(2) Each NNM issuer which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(3) Each NNM issuer which is not subject to SEC Rule 13a-13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to shareholders differs from that filed with the regulatory authority, the issuer shall file one copy of the report to shareholders with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

(c) Independent Directors

Each NNM issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4460(d)(2).

(d) Audit Committee**(1) Audit Committee Charter**

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to [ensure] oversee the independence of the outside auditor; and

(C) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(2) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past

employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(C) Exception for Small Business Filers – Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(e) Shareholder Meetings

Each NNM issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to Nasdaq.

(f) Quorum

Each NNM issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 percent of the outstanding shares of the company's common voting stock.

(g) Solicitation of Proxies

Each NNM issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to Nasdaq.

(h) Conflicts of Interest

Each NNM issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body of the Board of Directors for the review of potential conflict of interest situations where appropriate.

(i) Shareholder Approval

(1) Each NNM issuer shall require shareholder approval of a plan or arrangement under subparagraph (A) below, or prior to the issuance of designated securities under subparagraph (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g. ESOPs). In a case where the shares are issued to a person not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company, shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval;

(B) when the issuance or potential issuance will result in a change of control of the issuer;

(C) in connection with the acquisition of the stock or assets of another company if:

(i) any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(ii) where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash:

a. the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock;
or

b. the number of shares of common stock to be

issued is or will be equal to or in excess of 20% of the number of shares or common stock outstanding before the issuance of the stock or securities; or

(D) in connection with a transaction other than a public offering involving:

(i) the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or

(ii) the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

(2) Exceptions may be made upon application to Nasdaq when:

(A) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

(B) reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

A company relying on this exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the Audit Committee of the Board or a comparable body has expressly approved the exception.

(3) Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this paragraph (i). Unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

(4) Voting power outstanding as used in this Rule refers to the aggregate number of votes which may be cast by holders of those securities outstanding which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

(5) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of an issuer or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(6) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal in person or by proxy.

(j) Voting Rights

(1) No rule, stated policy, practice, or interpretation of Nasdaq shall permit the authorization for quotation and/or transaction reporting through an automated inter-dealer quotation system (authorization), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Act.

(2) For the purposes of paragraph (j)(1), the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(A) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(B) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(C) any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer; or

(D) any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(3) For the purposes of paragraph (j)(1), the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(A) the issuance of securities pursuant to an initial registered public offering;

(B) the issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(C) the issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;
or

(D) corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(4) The following terms shall have the following meanings for purposes of this Rule:

(A) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(B) The term "equity security" shall include any equity security defined as such pursuant to SEC Rule 3a11-1 under the Act.

(C) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in SEC Rule 3b-4 under the Act.

(D) The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

*Cross Reference - IM-4310, Voting Rights Policy***(k) Listing Agreement**

Each NNM issuer shall execute a Listing Agreement in the form designated by Nasdaq.

(l) Units**(1) Minimum Inclusion Period and Notice of Withdrawal**

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

(2) Disclosure Requirements for Units

Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period.

(m) Peer Review

(1) Each issuer must be audited by an independent public accountant that:

(A) has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or

(B) is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.

(2) The following guidelines are acceptable for purposes of paragraph (m):

(A) The peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;

(B) The peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section

Reference Manual; and

(C) The administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow Nasdaq access to those working papers.

(n) If an issuer establishes or maintains a Direct Registration Program for its shareholders, the issuer shall, directly or through its transfer agent, participate in an electronic link with a securities depository registered under Section 17A of the Exchange Act to facilitate the electronic transfer of securities held pursuant to such program

Selected NASD Notices to Members: 91-33.

4470. Non-Quantitative Designation Criteria for Issuers That Are Limited Partnerships

(a) Applicability

No provision of this Rule shall be construed to require any foreign issuer that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(b) Distribution of Annual and Interim Reports

(1) Each NNM issuer that is a limited partnership shall distribute to limited partners copies of an annual report containing audited financial statements of the limited partnership. The report shall be distributed to limited partners within a reasonable period of time after the end of the limited partnership's fiscal year end and shall be filed with Nasdaq at the time it is distributed to limited partners.

(2) (A) Each NNM issuer that is a limited partnership which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310 (c)(14).

The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each NNM issuer that is a limited partnership which is not subject to SEC Rule 13a-13 and which is required to file with the Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the issuer shall file one copy of the report to limited partners with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 4310(c)(14).

(c) Corporate General Partner/Independent Directors

Each issuer that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership. Such corporate general or co-partner shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4460(d)(2).

(d) Audit Committee

The corporate general partner or co-general partner of each issuer that is a limited partnership must satisfy the audit committee requirements set forth in Rule 4460(d).

(e) Partner Meetings

A NNM issuer that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(f) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (e), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(g) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (e), the issuer shall provide all limited partners with proxy or information statements and if a vote is required shall solicit proxies thereon.

(h) Listing Agreement

Each NNM issuer that is a limited partnership shall execute a Listing Agreement in the form designated by Nasdaq.

(i) Conflict of Interest

Each NNM issuer which is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

4480. Termination Procedure

(a) If Nasdaq determines to suspend or terminate a security's inclusion because of noncompliance with the provisions of Rules 4450, 4460, or 4470, Nasdaq will notify the issuer prior to suspension or termination or as soon as practicable thereafter. This notification constitutes a Staff Determination for purposes of Rule 4815 and the issuer may request review of the decision under the Rule 4800 Series.

(b) An issuer may voluntarily terminate its listing and registration on Nasdaq by submitting an application to the Securities and Exchange Commission pursuant to SEC Rule 12d2-2 and promptly delivering a copy of the application to Nasdaq.

Selected NASD Notices to Members: 94-70.

4500. ISSUER LISTING FEES**4510. The Nasdaq National Market****(a) Entry Fee**

(1) When an issuer submits an application for inclusion of any class of its securities in the Nasdaq National Market, it shall pay to Nasdaq:

(A) a one-time company listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee); and

(B) a fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$29,525
1+ to 2 million shares	\$33,750
2+ to 3 million shares	\$43,750
3+ to 4 million shares	\$48,750
4+ to 5 million shares	\$55,000
5+ to 6 million shares	\$58,725
6+ to 7 million shares	\$61,875
7+ to 8 million shares	\$64,375
8+ to 9 million shares	\$67,875
9+ to 10 million shares	\$70,625
10+ to 11 million shares	\$73,875
11+ to 12 million shares	\$76,625
12+ to 13 million shares	\$79,875
13+ to 14 million shares	\$82,000
14+ to 15 million shares	\$83,500
15+ to 16 million shares	\$85,500
Over 16 million shares	\$90,000

(2) Total shares outstanding means the aggregate of all classes of equity securities to be included in the Nasdaq National Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(3) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(4) If the application is withdrawn or is not approved, the entry fee (less the non-refundable processing fee) shall be refunded.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in Nasdaq shall pay to Nasdaq the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be \$2,000 or \$.01 per additional share, whichever is higher, up to a maximum of \$17,500 per quarter and an annual maximum of \$35,000 per issuer.

(3) The fee will be calculated and assessed quarterly based on the issuer's total shares outstanding as reported on its periodic reports filed with the SEC.

(c) Annual Fee - Domestic and Foreign Issues

(1) The issuer of each class of securities that is a domestic or foreign issue

listed in the Nasdaq National Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$10,710	11+ to 12 million shares	\$17,505
1+ to 2 million shares	\$10,960	12+ to 13 million shares	\$17,755
2+ to 3 million shares	\$11,210	13+ to 14 million shares	\$18,005
3+ to 4 million shares	\$11,460	14+ to 15 million shares	\$18,255
4+ to 5 million shares	\$11,710	15+ to 16 million shares	\$18,505
5+ to 6 million shares	\$11,960	16+ to 20 million shares	\$18,755
6+ to 7 million shares	\$12,210	20+ to 25 million shares	\$22,795
7+ to 8 million shares	\$12,460	25+ to 50 million shares	\$26,625
8+ to 9 million shares	\$12,710	50+ to 75 million shares	\$32,625
9+ to 10 million shares	\$12,960	75+ to 100 million shares	\$43,125
10+ to 11 million shares	\$17,255	Over 100 million shares	\$50,000

(2) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

(3) If a class of securities is removed from the Nasdaq National Market that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to The Nasdaq SmallCap Market fees for that calendar year.

(4) The annual fee shall be based on the total shares outstanding of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(d) Annual Fee - American Depositary Receipts (ADRs)

(1) The issuer of each class of securities that is an ADR listed in the Nasdaq National Market shall pay to Nasdaq an annual fee to be computed as follows with a maximum annual fee of \$8,000 per issuer:

(A) a \$2,000 Nasdaq National Market participation fee; and

(B) the sum of \$500 or \$.0005 per share outstanding, whichever is higher, up to a maximum of \$6,000 for each class of securities listed in the Nasdaq National Market.

(2) The annual fee shall be based on the total shares outstanding of the class included in the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) The Nasdaq Board of Directors or its designee may, in its discretion,

defer or waive all or any part of the annual fee prescribed herein.

(4) If a class of securities is removed from the Nasdaq National Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to The Nasdaq SmallCap Market fees for that calendar year.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1) When an issuer submits an application for inclusion of any class of its securities in The Nasdaq SmallCap Market, it shall pay to Nasdaq:

(A) a one-time company listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee); and

(B) for each class of securities listed, a fee to be computed as follows, with a maximum entry fee for all classes of securities listed, regardless of the date those securities are listed, of \$10,000 per issuer (inclusive of the \$5,000 company listing fee):

(i) Equity Securities

\$1,000 or \$.001 per share outstanding, whichever is higher. For purposes of this subparagraph, the term "equity securities" includes all securities eligible for inclusion in The Nasdaq SmallCap Market not covered by subparagraph (ii) hereof.^{xii*}

(ii) Convertible Debentures

\$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher.

(2) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

(3) The entry fee shall be based on the total shares outstanding of the class to be included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4) If the application is withdrawn or is not approved, the entry fee (less the non-refundable processing fee) shall be refunded.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in The Nasdaq SmallCap Market shall pay to Nasdaq the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be \$2,000 or \$.01 per additional share, whichever is higher, up to a maximum of \$17,500 per quarter and an annual maximum of \$35,000 per issuer.

(3) The fee will be calculated and assessed quarterly based on the issuer's total shares outstanding as reported on its periodic reports filed with the SEC.

(c) Annual Fee - Domestic and Foreign Issues

(1) The issuer of a class of securities that is a domestic or foreign issue listed in The Nasdaq SmallCap Market shall pay to Nasdaq an annual fee to be computed as follows:

(A) \$4,000 for the first issue; plus

(B) \$1,000 for each additional issue.

(2) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

(3) If a class of securities is removed from The Nasdaq SmallCap Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to Nasdaq National Market fees for that calendar year.

(d) Annual Fee - American Depositary Receipts (ADRs)

(1) The issuer of each class of securities that is an ADR listed in The Nasdaq SmallCap Market shall pay to Nasdaq an annual fee to be computed as follows with a maximum annual fee of \$6,000 per issuer:

(A) Equity Securities

\$500 or \$.0005 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in The Nasdaq SmallCap Market not covered by paragraph (B) of this section.^{xiii} 1

(B) Convertible Debentures

\$500 or \$25 per million dollars face amount of debentures outstanding, whichever is higher.

(2) The annual fee shall be based on the total amount of outstanding securities of the class included in The Nasdaq SmallCap Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority and received by Nasdaq.

(3) The Nasdaq Board of Governors, or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

(4) If a class of securities is removed from The Nasdaq SmallCap Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to Nasdaq National Market fees for that calendar year.

4600. NASDAQ MARKET MAKER REQUIREMENTS

4610. Registration and Other Requirements

4611. Registration as a Nasdaq Market Maker

(a) Quotations and quotation sizes may be entered into Nasdaq only by a Nasdaq member registered as a Nasdaq market maker or other entity approved by Nasdaq to function in a market-making capacity.

(b) A Nasdaq member seeking registration as a Nasdaq market maker shall file an application with Nasdaq. The application shall certify the member's good standing with Nasdaq and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a Nasdaq market maker shall become effective upon receipt by the member of notice of a approval of registration by Nasdaq.

(c) A Nasdaq market maker may become registered in an issue by entering a registration request via a Nasdaq terminal or other Nasdaq approved electronic interface with Nasdaq's systems or by contacting Nasdaq Market Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered.

(d) A Nasdaq market maker's registration in an issue shall be terminated by Nasdaq 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.

(e) Unless otherwise specified by Nasdaq, each Nasdaq market maker that is registered as a market maker in a Nasdaq National Market security shall also at all times be registered as a

market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.

(f) In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by Nasdaq and published from time to time in the Nasdaq/CQS symbol directory.

Selected NASD Notices to Members: 93-24.

4612. Primary Nasdaq Market Maker Standards

(a) A member registered as a Nasdaq market maker pursuant to Rule 4611 may be deemed to be a Primary Nasdaq Market Maker in Nasdaq National Market securities if the market maker complies with threshold standards (as established and published by Nasdaq from time to time) in the following qualification criteria:

- (1) amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in Nasdaq;
- (2) relation of individual dealer spread to average dealer spread; and
- (3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.^{xiv}

(b) A market maker for a Nasdaq National Market security must satisfy the threshold standards in at least two of the criteria in paragraph (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by Nasdaq from time to time).^{xv}

(c) The review period for review of market maker performance in each of the qualification criteria in paragraph (a), paragraph (g)(1)(B), and paragraph (g)(2)(B)(ii) shall be one calendar month.

(d) If, after the review period, a market maker does not satisfy the threshold standards for the criteria in paragraph (a), the Primary Nasdaq Market Maker designation shall be withheld commencing on the next business day following notice of failure to comply with the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

(1) Grounds for requests for reconsideration shall be limited to:

(A) system failure;

(B) excused market maker withdrawal status; or

(C) where a market maker failed to qualify under the criteria set forth in paragraph (a)(3) because of activity in a related derivative or convertible security, or activity in a security subject to derivative pricing mechanisms, such as currency differentials with foreign stocks.

(2) Requests for reconsideration must be sent in writing to Nasdaq Operations within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation.

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq National Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary Nasdaq Market Maker in that stock if the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq

National Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(B) For initial public offerings (IPOs):

(i) the market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(C) For purposes of subparagraph (B)(i) above:

(i) an issue ceases to be an IPO once it has traded on Nasdaq for five (5) business days; and

(ii) the applicable first review period for IPOs that come to market during the last five (5) business days of a month is the calendar month after the month in which the IPO commenced trading on Nasdaq.

(3) Notwithstanding paragraph (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Rule 4611.

(h) Nasdaq may modify the threshold standards set forth in paragraphs (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on Nasdaq.

Selected NASD Notices to Members: 94-68, 94-83.

4613. Character of Quotations**(a) Two-Sided Quotations**

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in Nasdaq, subject to the procedures for excused withdrawal set forth in Rule 4619.

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

(3) Each member registered as a Nasdaq market maker in Nasdaq SmallCap Market equity securities shall display size in its quotations of 500 or 100 shares and the following guidelines shall apply to determine the applicable size requirement:

(A) a 500 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of 1,000 shares or more a day or a bid price of less than \$10.00 a share; and

(B) a 100 share requirement shall apply to Nasdaq SmallCap Market securities with an average daily non-block volume of less than 1,000 shares a day and a bid price equal to or greater than \$10.00 a share.

(4) Share size display requirements in individual securities may be changed depending upon unique circumstances as determined by Nasdaq, and a list of the size requirements for all Nasdaq equity securities shall be published from time to time by Nasdaq.

(5) Notwithstanding the minimum quotation size requirements contained in subparagraphs (a)(2) or (3) above, a market maker's obligation to maintain its displayed quotation size at or above the applicable minimum quotation size requirements does not apply to the market maker's displayed quotation size resulting from quotation decrementation below the applicable minimum quotation size requirement upon the execution of a SOES order against the market maker pursuant to NASD Rule 4730(b)(1), until that quotation size is decremented to zero.

(b) Firm Quotations

(1) A market maker that receives an offer to buy or sell from another Nasdaq member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in Nasdaq at the time of receipt of any such offer. If a 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 Nasdaq member, execute a transaction at least at the size displayed.

(2) If a market maker, upon receipt of an offer to buy or sell from another Nasdaq member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated in Nasdaq 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 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 a 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

A market maker shall enter and maintain quotations that are reasonably related to the prevailing market. Should it appear that a market maker's quotations are no longer reasonably related to the prevailing market, Nasdaq may require the market maker to re-enter its quotations. If a market maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, Nasdaq may suspend the market maker's quotations in one or all securities.

(1) In the event that a market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Nasdaq Market Operations to request the withdrawal of its quotations.

(2) In the event that a market maker's ability to enter or update quotations is impaired and the market maker elects to remain in Nasdaq, the market maker shall execute an offer to buy or sell received from another Nasdaq member at its quotations as disseminated through Nasdaq.

(d) [Reserved]**(e) Locked and Crossed Markets**

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

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

in the same security; or

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

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(i) Locked/Crossed Market Prior to 9:20 a.m. -- For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid(ask) quotation that locks/crosses another market maker’s quotation(s) or has had its quotation(s) locked/crossed by another market maker (“party to a lock/cross”) may, beginning at 9:20 a.m. Eastern Time, send through Nasdaq’s SelectNet system (or its successor system) a message of any size that is at the receiving market maker’s quoted price (“Trade-or-Move Message”). Any market maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(ii) Locked/Crossed Market Between 9:20 and 9:29:59 a.m. -- If a market maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must immediately send through SelectNet to the market maker whose quotes it is locking or crossing a Trade-or-Move a message that is at the receiving market maker’s quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (iv) of this rule), the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares. A market maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(iii) A market maker that sends a Trade-or-Move Message pursuant to subparagraphs (e)(1)(C)(i) or (e)(1)(C)(ii) of this rule must append to the

message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

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

(2) A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

(3) For purposes of this rule, the term "market maker" shall include:

(A) any Nasdaq member that enters into an ECN, as that term is defined in SEC Rule 11Ac1-1(a)(8), a priced order that is displayed in Nasdaq;

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

(C) any Nasdaq member that enters into an ATS, as that term is defined in SEC Regulation ATS, an order that is displayed in Nasdaq; and

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

Selected NASD Notices to Members: 91-37, 93-2, 93-43, 99-61.

IM-4613. Autoquote Policy

(a) General Prohibition - Nasdaq has extended a policy banning the automated update of quotations by market makers in Nasdaq. Except as provided below, this policy prohibits systems known as "autoquote" systems from effecting automated quote updates or tracking of inside quotations in Nasdaq. This ban is necessary to offset the negative impact on the capacity and operation of Nasdaq of certain autoquote techniques that track

changes to the inside quotation in Nasdaq and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions to the General Prohibition - Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613(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); (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order; or (4) an electronic communications network as defined in SEC Rule 11Ac1-1(a)(8) is required to maintain a two-sided quotation in Nasdaq for the purpose of meeting Nasdaq system design requirements.

Selected NASD Notices to Members: 99-61.

4614. Stabilizing Bids

(a) Market maker Obligation/Identifier

A market maker that intends to stabilize the price of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall submit a request to Nasdaq Market Operations for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) Eligibility

Only one market maker in a security may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids

(1) A stabilizing bid shall not be entered in Nasdaq unless at least one other market maker in addition to the market maker entering the stabilizing bid is registered as a market maker in the security and entering quotations that are considered an independent bid under SEC Rule 104.

(2) A stabilizing bid must be available for all freely tradeable outstanding securities of the same class being offered.

(d) Submission of Request to Nasdaq

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq Market Operations for entry on Nasdaq of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq Market Operations that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq Market Operations that shall include:

- (A) the identity of the security and its Nasdaq symbol;
- (B) the contemplated effective date of the offering and the date when the offering will be priced;
- (C) the date and time that an identifier should be included on Nasdaq; and
- (D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless Nasdaq determines otherwise.

4615. [Reserved]

4616. Reports

A market maker shall make such reports to Nasdaq as may be prescribed from time to time by Nasdaq.

Selected NASD Notices to Members: 88-104, 89-17, 89-70, 93-83.

4617. Normal Business Hours

A Nasdaq 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. Should a market maker wish to voluntarily remain open for business later than 4:00 p.m. Eastern Time, it shall so notify the Nasdaq Market Operations via a Nasdaq terminal and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time. Nasdaq 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 Nasdaq Rules that are not by their express terms, or by an official interpretation of Nasdaq, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618. Clearance and Settlement

(a) A market maker shall clear and settle transactions in Nasdaq securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

- (b) Notwithstanding paragraph (a), transactions in Nasdaq securities may be settled "ex-clearing" provided that both parties to the transaction agree

(c) All transactions through the Nasdaq National Market Execution System, SOES, and SelectNet services shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

Selected NASD Notices to Members: 94-73.

4619. Withdrawal of Quotations and Passive Market Making

(a) A 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 Nasdaq Market Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq Market Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by Nasdaq one business day in advance and is approved by Nasdaq. Excused withdrawal status based on vacation may be granted only if:

(1) the request for withdrawal is received by Nasdaq one business day in advance, and is approved by Nasdaq;

(2) the request includes a list of the securities for which withdrawal is requested; and

(3) the request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611, above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby

terminating its registration as a market maker in Nasdaq issues. Provided however, that if Nasdaq finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series, and the Rule 4700 Series governing the Nasdaq's National Market Execution System.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 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 Nasdaq 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 Nasdaq Market Operations and the Market Regulation Department of NASD Regulation, Inc. 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 (d)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a 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 market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq Market 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 Nasdaq Market Operations as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq Market Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq Market 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 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 Nasdaq Market Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit Nasdaq from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq Market Operations to obtain an excused withdrawal as required by subparagraphs (a) and (d) of this Rule.

(4) The quotations of a passive market maker shall be identified on Nasdaq as those of a passive market maker.

(5) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (d)(1) of this rule shall submit a request to Nasdaq Market Operations and the market Regulation Department of NASD Regulation, Inc. 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 by this subparagraph may be submitted on the Underwriting Activity Report.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

Selected NASD Notices to Members: 88-69, 89-15, 93-29, 93-41.

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its quotations from Nasdaq. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq National Market security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq National Market and SmallCap issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) the market maker notified Market Operations of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) the market maker's firm would not exceed the following reinstatement limitations:

(A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;

(B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and

(C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

(c) Factors that Nasdaq will consider in granting a reinstatement under paragraph (b) of this rule include, but are not be limited to:

(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) market conditions at the time of the withdrawal;

(4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and

(5) the timeliness with which the market maker notified Market Operations of the error.

(d) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their denial of a reinstatement pursuant to paragraph (b) above.

4621. Suspension and Termination of Quotations by Nasdaq Action

Nasdaq may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a market maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622. Termination of Nasdaq Service

Nasdaq may, upon notice, terminate Nasdaq service in the event that a market maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by Nasdaq.

Selected NASD Notices to Members: 88-43.

4623. Alternative Trading Systems

(a) Nasdaq may provide a means to permit alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 11Ac1-1(a)(8),

(1) to comply with SEC Rule 301(b)(3);

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 11Ac1-1(c)(5)(ii)(A) and (B) ("ECN display alternatives"); or

(3) to provide orders to Nasdaq voluntarily.

In providing any such means, Nasdaq shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by Nasdaq market makers (and other subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC 301(b)(3) to display a subscriber's order in Nasdaq, and allows any Nasdaq member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

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

(1) demonstrate to Nasdaq that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as a Nasdaq member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement, as amended for ATSS and ECNs;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq 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 Nasdaq), 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 Nasdaq Market Operations as an ATS or ECN;

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the ATS or ECN through the Nasdaq-provided display alternative; and

(6) not charge to broker-dealers that access the ATS or ECN through Nasdaq any fee that is inconsistent with the requirements of SEC Rule 301(b)(4).

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

(1) up to the size of the Nasdaq-delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No ATS or ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq 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.

4624. Penalty Bids and Syndicate Covering Transactions

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc.

of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A market maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

- (1) the identity of the security and its Nasdaq symbol;
- (2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

(c) Notwithstanding paragraph (a), a market maker may request that its quotation identified as a penalty bid on Nasdaq display by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on Nasdaq.

(d) The written notice required by this Rule may be submitted on the Underwriting Activity Report.

4625. Obligation to Provide Information

(a) A Nasdaq member operating in or participating in Nasdaq, or any other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(1) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by Nasdaq; this shall include, but not be limited to, information relating to:

- (A) a locked or crossed market;
- (B) a trade reported by a member or ECN to the Automated Transaction Confirmation Service ("ACT"); or
- (C) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Nasdaq Rule 4120 and IM-4120-1; or
- (D) a quotation that appears not to be reasonably related to the

prevailing market.

(2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, NASD rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by Nasdaq; this shall include, but not be limited to, information relating to:

(A) a clearly erroneous transaction, pursuant to Nasdaq Rule 11890;

(B) a request to reconsider a determination to withhold a primary market maker designation, pursuant to Nasdaq Rule 4612;

(C) a request for an excused withdrawal or reinstatement, pursuant to Nasdaq Rules 4619, 4620, 4730, 5106 and 6350;

(D) the resolution of a trade-through complaint, pursuant to Nasdaq Rules 5262, 5265, and 11890;

(E) an ACT input error;

(F) an equipment failure; or

(G) a request to submit a stabilizing bid, pursuant to Nasdaq Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to Nasdaq Rule 4624.

(b) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.

4630. Reporting Transactions in Securities Listed on Nasdaq

This Rule 4630 Series governs the reporting of transactions executed on Nasdaq in securities listed on Nasdaq ("designated securities"). For purposes of this Rule Series, securities listed on Nasdaq are National Market securities (including limited partnership rollup securities), and SmallCap securities (including convertible debt securities). National Market securities have been designated pursuant to the "National Market System Securities Designation Plan with Respect to Nasdaq Securities" which has been approved by the Commission pursuant SEC Rule 11Aa3-1.

IM 4630-1. Transactions Executed on Nasdaq

A transaction is executed on Nasdaq and must be reported to Nasdaq if: (1) the transaction is facilitated or executed through a Nasdaq system that automatically produces trade reports (See Rule 4632); (2) a Registered Reporting Market Maker is (a) a party to the transaction, or (b) the transaction is facilitated (*e.g.*, crossed or matched) by the Registered Reporting Market Maker; or (3) a Registered Reporting ECN is (a) a party to the transaction, or (b) the transaction is facilitated (*e.g.*, crossed or matched) by the Registered Reporting ECN. In addition, a Nasdaq member may voluntarily report to Nasdaq any transaction executed otherwise than on a national securities exchange.

Notwithstanding the factors above, a transaction is not executed on Nasdaq and does not have to be reported to Nasdaq if another exchange or the OTC market is the destination, executing market and liquidity provider. For example, an exchange other than Nasdaq is the destination, executing market and liquidity provider when an order is sent to another exchange and that exchange's liquidity provider executes the order. The OTC market is the destination, executing market and liquidity provider when an order is sent to an OTC Market Maker (or an ECN that is a member of the NASD - - "OTC ECN") and that OTC market maker (or OTC ECN) executes the order. Transactions executed on another exchange or the OTC market should be reported in accordance with the rules of the other exchange or the NASD, unless IM 4633-4 or IM 4633-3(d) are applicable.

4631. Definitions

(a) Terms used in this Rule 4630 Series shall have the meaning as defined in Nasdaq's By-Laws and Rules, and SEC Rule 11Aa3-1, unless otherwise defined herein.

(b) "Automated Confirmation Transactions Service" or "ACT" is the service that, among other things, accommodates reporting and dissemination of last sale reports in designated securities.

(c) "Registered Reporting Market Maker" means a member of Nasdaq that is registered as a Nasdaq market maker in a particular designated security. A member is a Registered Reporting 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 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 Nasdaq.

(d) "Non-Registered Reporting Member" means a member of Nasdaq that is not a Registered Reporting Market Maker or a Registered Reporting ECN.

(e) "Registered Reporting ECN" means a member of Nasdaq that is an electronic communications network ("ECN") that elects to display orders in Nasdaq pursuant to Rule 4623. A member is a Registered Reporting ECN in only those designated securities

for which it is registered with Nasdaq. A member shall cease being a Registered Reporting ECN 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 Nasdaq. The term “Registered Reporting ECN” shall also include Nasdaq members that are alternative trading systems (“ATS”) that display orders in Nasdaq pursuant to Rule 4623.

(f) “OTC Market Maker” shall have the meaning as defined in SEC Rule 11Ac1-1 under the Act and NASD Rule 4631.

4632. Transaction Reports Automatically Generated by Nasdaq Systems

Certain Nasdaq systems automatically generate transaction reports on behalf of members. Members shall not separately report transactions facilitated or executed through the Nasdaq National Market Execution System (“NNMS”), the Small Order Execution System (“SOES”), the SelectNet service, or any other Nasdaq system that automatically generates transaction reports. All transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq, except those transactions for which a Nasdaq system delivers an order/execution to another exchange or the OTC market, as described in IM 4630-1. Transactions not facilitated or executed through a Nasdaq system shall be reported pursuant to Rule 4633.

4633. Transactions Reported by Members

(a) Normal Market Hours

Transactions in designated securities executed during normal market hours that are not reported automatically by a Nasdaq system shall be reported by members as follows:

(1) Registered Reporting Market Makers and Registered Reporting ECNs shall transmit last sale reports through ACT within 90 seconds after execution. 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 may voluntarily report to Nasdaq transactions that are executed otherwise than on a national securities exchange. Transactions not voluntarily reported to Nasdaq shall be reported in accordance with NASD rules. Non-Registered Reporting Members that elect to report transactions to Nasdaq shall transmit last sale reports through ACT, the ACT Service Desk (if qualified pursuant to Rule 7010(i)), or by telephone to the Market Operations Department (if ACT is unavailable due to system or transmission failure) within 90 seconds after execution. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of

execution.

(b) Outside Normal Market Hours

Transactions in designated securities executed outside normal market hours that are not reported automatically by a Nasdaq system shall be reported by members as set out below. All times referenced in this rule are Eastern Time.

(1) For transactions executed between the hours of 8:00 a.m. and 9:30 a.m. and 4:00 p.m. and 6:30 p.m.,

(A) Registered Reporting Market Makers and Registered Reporting ECNs shall transmit last sale reports through ACT within 90 seconds after execution. Such last sale reports 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) Non-Registered Reporting Members may voluntarily report to Nasdaq transactions executed otherwise than on a national securities exchange. Transaction not voluntarily reported to Nasdaq shall be reported in accordance with NASD rules. Non-Registered Reporting Members that elect to report transactions to Nasdaq shall transmit last sale reports through ACT, the ACT Service Desk (if qualified pursuant to Rule 7010(i)), or by telephone to the Market Operations Department (if ACT is unavailable due to system or transmission failure) within 90 seconds after execution. Such last sale reports 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.

(2) For transactions executed between the hours of midnight and 8:00 a.m.,

(A) Registered Reporting Market Makers and Registered Reporting ECNs shall transmit last sale reports through ACT between 8:00 a.m. and 9:30 a.m. on trade date. Such last sale reports shall be designated as ".T" trades, to denote their execution outside normal market hours, and include the time of execution.

(B) Non-Registered Reporting Members may voluntarily report to Nasdaq transactions executed otherwise than on a national securities exchange. Transactions not reported to Nasdaq shall be reported in accordance with NASD rules. Non-Registered Reporting Members that elect to report transactions to Nasdaq shall transmit last sale reports through ACT, the ACT Service Desk (if qualified pursuant to Rule 7010(i)), or by telephone to the Market Operations Department (if ACT is

unavailable due to system or transmission failure) between 8:00 a.m. and 9:30 a.m. on trade date. Such last sale reports shall be designated as ".T" trades, to denote their execution outside normal market hours, and include the time of execution.

(3) For securities transactions executed between the hours of 6:30 p.m. and midnight,

(A) Registered Reporting Market Makers and Registered Reporting ECNs shall transmit last sale reports through ACT on the next business day (T+1) between 8:00 a.m. and 6:30 p.m.. Such last sale reports shall be designated "as/of" trades, to denote their execution on a prior day, and include the time of execution.

(B) Non-Registered Reporting Members may voluntarily report to Nasdaq transactions executed otherwise than on a national securities exchange. Transactions not reported to Nasdaq shall be reported in accordance with NASD rules. Non-Registered Reporting Members that elect to report transactions to Nasdaq shall transmit last sale reports through ACT, the ACT Service Desk (if qualified pursuant to Rule 7010(i)), or by telephone to the Market Operations Department (if ACT is unavailable due to system or transmission failure) on the next business day between 8:00 a.m. and 6:30 p.m.. Such last sale reports shall be designated "as of" trades, to denote their execution on a prior day, and include the time of execution.

(c) Determining Which Party Reports a Transaction to Nasdaq

(1) For transactions between two Registered Reporting Market Makers, the member representing the sell side shall report the transaction.

(2) For transactions between a Registered Reporting Market Maker and a Non-Registered Reporting Member, the Registered Reporting Market Maker shall report the transaction.

(3) For transactions between two Non-Registered Reporting Members, the member representing the sell side shall report the transaction. The transaction can be reported to either Nasdaq or the NASD, unless Rule 4632 is applicable. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

(4) For transactions between a Registered Reporting Market Maker and a customer, the Registered Reporting Market Maker shall report.

(5) For transactions between a Non-Registered Reporting Member and a customer, the Non-Registered Reporting Member shall report the transaction. The

transaction can be reported to either Nasdaq or the NASD, unless Rule 4632 is applicable. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

(6) For transactions executed by or through the facilities of a Registered Reporting ECN, the Registered Reporting ECN shall report the transactions in accordance with IM 4633-3.

(7) For transactions between a Registered Reporting Market Maker and an OTC Market Maker, the Registered Reporting Market Maker shall report when it is providing the liquidity, as such principle is described in IM 4633-2.

(8) For transactions between a Registered Reporting Market Maker and any broker-dealer that is not a Nasdaq member and not an OTC Market Maker, the Registered Reporting Market Maker shall report the transaction.

(9) For transactions between a Non-Registered Reporting Member and an OTC Market Maker, the OTC Market Maker shall report the transaction in accordance with NASD rules, unless IM 4633-4 is applicable.

(10) For transactions between a Non-Registered Reporting Member and a any broker-dealer that is not a Nasdaq member and is not an OTC Market Maker, but is a member of the NASD, the Non-Registered Reporting Member shall report when it is representing the sell side. The transaction can be reported to either Nasdaq or the NASD, unless Rule 4632 is applicable. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

(11) For transactions between a Non-Registered Reporting Member and any broker-dealer that is not a Nasdaq member and is not an NASD member, but is a member of an exchange(s) that does not trade Nasdaq listed securities pursuant to unlisted trading privileges, the Non-Registered Reporting Member shall report the transaction. The transaction can be reported to either Nasdaq or the NASD, unless Rule 4632 is applicable. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

(d) Information To Be Reported

Each last sale report shall contain the following information:

- (1) Nasdaq symbol of the designated security.
- (2) Number of shares or bonds.
- (3) Price of the transaction as required by paragraph (e) below.

(4) A symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt, or cross.

(5) A symbol indicating whether the trade is as principal, riskless principal, or agent.

(6) 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:

(A) An order identifier, meeting such parameters as may be prescribed by the NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

(B) The time of execution expressed in hours, minutes, and seconds according to the 24 hour clock based on Eastern Time (*e.g.*, a trade executed at 1:30:45 p.m. Eastern Time would be reported as executed at 13:30:45). This information must be reported regardless of the period of time between execution of the trade and the ACT report.

(7) Where applicable, a symbol indicating that the transaction was executed at a price based on average-weighting (or other special formula) or at a price different from the current market when the execution is based on a prior reference point in time.

(8) Where applicable, any other symbol prescribed by Nasdaq to indicate special circumstances (*e.g.*, .T for transactions executed outside normal market hours, or .SLD for transactions executed during normal market hours but reported more than 90 seconds after execution).

(e) Procedures for Reporting Price and Volume

(1) Members that are required to report pursuant to paragraph (c) above shall transmit last sale reports in the following manner:

(A) 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.

(B) 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.

(C) (i) 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 which 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 39.85 which includes a .15
mark-down from prevailing market at 40;

REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer
at 40.15, which includes a .15 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
.25 mark-down or service charge from the
prevailing market of 40;

REPORT 10,000 shares at 40.

(ii) 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 ACT:

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

b. Regardless of whether a member has a reporting obligation pursuant to paragraph (c) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:

1. a clearing-only report with a capacity indicator of “riskless principal,” if a clearing report is necessary to clear the transaction; or

2. 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 ACT 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.

(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by Nasdaq and shall include in the transaction report the prior reference time.

Example:

At 9:45 a.m., a member discovers that a customer’s order to BUY 100 shares at the opening price has not been executed.

The member executes the customer’s order at 9:45 a.m. at the opening price (\$40). Current market is 41.

REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.

(f) Aggregation of Transaction Reports

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

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

Example:

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

REPORT 10,000 shares at 40.

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

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

REPORT 10,000 shares at 40.

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

Example:

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

REPORT 50,000 at 40.

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

REPORT 12,500 at 40.

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

REPORT 15,000 at 40.

Example:

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

REPORT 10,000 at 40.

(D) Orders received or initiated by the reporting member which 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 Nasdaq.

(g) Late Trade Reports

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.

(h) Reporting Transactions on Form T

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

(i) Trade Tickets

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

(j) Transactions Not To Be Reported To Nasdaq

The following types of transactions shall not be reported to Nasdaq:

- (1) odd-lot transactions;
- (2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution;
- (3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;
- (4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);

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

(k) Dissemination of Transaction Reports in Convertible Debt Securities

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

Selected NASD Notices to Members: 83-1, 87-85, 93-9, 93-25, 93-83, 94-71, 98-82, 99-65, 99-66.

IM-4633-1. Transaction Reporting

Nasdaq seeks to emphasize 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. Nasdaq routinely monitors members' compliance with the 90 second requirement. If Nasdaq 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 Nasdaq's marketplace, and Nasdaq will view noncompliance as a rule violation.

IM-4633-2. Liquidity Provider

A member's obligations under certain provisions of Rule 4633 are dependent on whether the member is the liquidity provider for the transaction. The liquidity provider is the broker-dealer to whom an order is delivered for execution. This principle is applicable in situations in which an order is delivered by a Nasdaq system, a broker-dealer's proprietary system, a system provided by a commercial vendor, or any other type of order delivery system. When a transaction is negotiated between broker-dealers, either through SelectNet, some other electronic negotiation system, or a telephone conversation, the liquidity provider is the party that was initially contacted, regardless of whether that party replies with a counter offer. The broker-dealer that initiates the negotiation will not be considered the liquidity provider because by initiating the contact it is considered the party in search of liquidity.

The following examples illustrate the liquidity provider principle:

OTC Market Maker (“OTCMM”) possesses an order to sell 1000 shares of a security. OTCMM contacts Registered Reporting Market Maker Z (“MMZ”), and MMZ buys the 1000 shares from OTCMM. In this example, MMZ is the liquidity provider because it was the party that was sought out by the seller (*i.e.*, to fill its order, OTCMM sought the liquidity provided by MMZ). Therefore, under Rule 4633(c)(7), MMZ would report the transaction to Nasdaq.

MMZ could also be the liquidity provider when it is the seller. For example, OTCMM possesses an order to buy 1000 shares. OTCMM contacts MMZ, and MMZ sells the 1000 shares to OTCMM. MMZ is the liquidity provider because it was the party that was sought out by the buyer. In this example, OTCMM sought the liquidity provided by MMZ to fill the buy order. Therefore, under Rule 4633(c)(7), MMZ would report this transaction to Nasdaq.

In these examples, the “contact” can occur through several methods. For example, OTCMM could send a SelectNet message to MMZ or the order/execution is delivered by NNMS. In addition, the order could be delivered by a broker-dealer’s proprietary order routing system, an order routing system provided by a commercial vendor, or an order routing system provided by Nasdaq. Nasdaq systems that automatically produce trade reports (See Rule 4632) will report the transaction on behalf of the parties and indicate which party is the liquidity provider.

IM-4633-3. Transaction Reporting by Registered Reporting ECNs

(a) Orders/Executions Delivered by Nasdaq Systems

When an order/execution is delivered to a Registered Reporting ECN by a Nasdaq system that automatically produces trade reports (See Rule 4632), the Nasdaq system will report the transaction on behalf of the parties. When a Nasdaq system that automatically produces trade reports delivers an ECN order/execution to a Registered Reporting Market Maker, the Nasdaq system will automatically produce the transaction report on behalf of the parties.

(b) Transactions Matched or Facilitated Within a Registered Reporting ECN

With the exception of those transactions described in paragraph (a), a Registered Reporting ECN must report to Nasdaq, in accordance with the matrix below, all transactions in designated securities in which it is a party or which it facilitates (*e.g.*, matches or crosses). A Registered Reporting ECN must report the transaction to Nasdaq as either a riskless principal transaction or as an agency cross.

Match/Facilitation	Where Reported	How Reported
RRMM => RRECEN <= RRMM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
RRMM => RRECEN <= NRRM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
RRMM => RRECEN <= OTCMM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
RRMM => RRECEN <= NNBD	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
RRMM => RRECEN <= Customer	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
NRRM => RRECEN <= NRRM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
NRRM => RRECEN <= OTCMM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
NRRM => RRECEN <= NNBD	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
NRRM => RRECEN <= Customer	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
Customer => RRECEN <= Customer	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
Customer => RRECEN <= OTCMM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
Customer => RRECEN <= NNBD	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
OTCMM => RRECEN <= OTCMM	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
OTCMM => RRECEN <= NNBD	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.
NNBD => RRECEN <= NNBD	Nasdaq	RRECEN must report this trade as riskless principal or an agency cross.

RRMM means Registered Reporting Market Maker.

RRECEN means Registered Reporting ECN.

NRRM means Non-Registered Reporting Member.

OTCMM means OTC Market Maker.

NNBD means Non-Nasdaq Broker-Dealer (*i.e.*, a broker-dealer that is not a Nasdaq member).

The matrix covers transactions that are matched or facilitated wholly within the ECN's system.

Transactions executed as result of the ECN's quote/order displayed in Nasdaq being accessed, or the ECN accessing the quote of a market maker, through a Nasdaq system (*e.g.*, SelectNet) are covered by paragraph (a) of this rule. The first example in the matrix illustrates a scenario in which two market makers that are subscribers of the ECN have placed their orders with an ECN and these orders have matched.

(c) Orders Routed Between ECNs

(1) When a Registered Reporting ECN routes an order to another Registered Reporting ECN, the receiving Registered Reporting ECN that executes the order must report the transaction to Nasdaq as a riskless principal or an agency cross transaction. The receiving Registered Reporting ECN must identify the

sending Registered Reporting ECN as its contra party.

(2) When a Registered Reporting ECN routes an order to an ECN that is not a Nasdaq member (*i.e.* is not a Registered Reporting ECN) and the receiving ECN executes the order, the receiving ECN should report the transaction in accordance with the rules of the self-regulatory organization of which it is a member.

(3) When a Registered Reporting ECN receives an order routed from an ECN that is not a Nasdaq member (*i.e.*, is not a Registered Reporting ECN) and executes the order, the Registered Reporting ECN must report the transaction to Nasdaq as a riskless principal or an agency cross transaction. The Registered Reporting ECN must identify the sending ECN as its contra party.

(d) Trade Reporting Obligations of Firms That Are Registered Reporting ECNs and Members of the NASD

An ECN that is a member of Nasdaq and the NASD can choose on a transaction-by-transaction basis to report its transactions in a security to either Nasdaq or the NASD if the ECN:

(1) is both a Registered Reporting ECN and an ECN that displays quotes in the over the counter market through a facility provided by the NASD;

(2) is simultaneously displaying quotes in the same security in Nasdaq and through the facilities provided by the NASD; and

(3) has a trade reporting obligation according to Rule 4633(c), paragraphs (b) and (c) of this Interpretive Material, and the rules of the NASD.

This choice is not available, however, if the transaction is covered by Rule 4632. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

IM-4633-4. Trade Reporting Obligations of Firms That Are Registered Reporting Market Makers and OTC Market Makers

A broker-dealer that is a member of Nasdaq and the NASD can choose on a transaction-by-transaction basis to report its transactions in a security to either Nasdaq or the NASD if the broker-dealer:

(1) is both a Registered Reporting Market Maker and an OTC Market Maker registered with the NASD;

(2) is simultaneously displaying quotes in the same security in Nasdaq and through the facilities provided by the NASD; and

(3) has a trade reporting obligation according to Rule 4633(c) and the rules of the NASD.

This choice is not available, however, if the transaction is covered by Rule 4632. Transactions facilitated or executed through a Nasdaq system will be reported to Nasdaq in accordance with Rule 4632.

4643. Customer Confirmations - Renumbered as Rule 2231

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM(NNMS)

4701. Definitions

(a) The term “Nasdaq National Market Execution System” or “NNMS” shall mean the automated system owned and operated by Nasdaq which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the 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 NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(b) The term “NNMS participant” shall mean either an NNMS Market Maker or NNMS Order Entry Firm registered as such with Nasdaq for participation in NNMS.

(c) The term “NNMS eligible securities” shall mean designated Nasdaq National Market (NNM) equity securities.

(d) The term “active NNMS securities” shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

(e) The term “NNMS Market Maker” shall mean a member of Nasdaq that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute orders for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or ask price.

(f) The term “NNMS Order Entry Firm” shall mean a member of Nasdaq who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders of limited size for execution against NNMS Market Makers.

(g) The term “automatic refresh size” shall mean the default size to which an NNMS Market Maker’s quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker does not designate to Nasdaq an alternative refresh size. The maximum order refresh size default size shall be 1,000 shares.

- (h) The term “Automated Confirmation Transaction” service or “ACT” shall mean the automated system owned and operated by Nasdaq which compares trade information entered by ACT Participants and submits “locked-in” trades to clearing.
- (i) The term “Agency Quote” shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with Nasdaq. Such registration shall be conditioned upon the NNMS Market Maker’s initial and continuing compliance with the following requirements:

- (1) execution of an NNMS Participant application agreement with Nasdaq;
- (2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;
- (3) registration as a market maker in Nasdaq pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of Nasdaq and the Commission;
- (4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the unauthorized entry of information into NNMS; and
- (5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611, participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNM security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with Nasdaq. Such registration shall be conditioned upon the NNMS Order Entry Firm’s initial and continuing compliance with the following requirements:

- (1) execution of an NNMS Participant application agreement with Nasdaq;
- (2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;
- (3) compliance with all applicable rules and operating procedures of Nasdaq and

the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

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

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

4710. Participant Obligations in NNMS

(a) Registration

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

(b) Market Makers

(1) An NNMS Market Maker in an NNMS Security shall be subject to the following requirements:

(A) For each NNM security in which it is registered as an NNMS Market Maker, the market maker must execute individual orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the displayed quotation and reserve size of such quotation(s). For purposes of this rule, the term “reserved size” shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker’s quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.

(B) Orders entered into the NNMS system shall be automatically executed against displayed quotations and reserve size, including Agency Quotes (if applicable), in price/time priority. For quotations at the same price level, the

NNMS system will yield priority to all displayed quotations over reserve size, so that the system will execute against displayed quotations in time priority and then against reserve size in time priority.

(C) The size of a displayed quotation will be decremented upon the execution of an NNMS order in an amount equal to or greater than one normal unit of trading; provided, however, that the execution of an NNMS order that is a mixed lot (i.e., an order that is for more than a normal unit of trading but not a multiple thereof) will only decrement a displayed quotation's size by the number of shares represented by the number of round lots contained in the mixed lot order.

(D) After the NNMS system has executed an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.

(F) All entries in NNMS 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 an NNMS Market Maker's displayed quotation size on either side of the market in the security has been decremented to zero due to NNMS executions, Nasdaq will refresh the market maker's displayed size out of reserve size to a size-level designated by the NNMS Market Maker, or in the absence of such size-level designation, to the automatic refresh size. If the market maker is using the reserve size function for its proprietary quote or Agency Quote, the market maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule.

(B) **Autoquote Refresh** -- Once an NNMS Market Maker's displayed quotation size and reserve size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have Nasdaq 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 zero, by an interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size.

A market maker's Agency Quotation shall not be subject to the

functionality described in this subparagraph.

(3) Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.

(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.

(5) An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS 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.

(6) An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by Nasdaq, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4)

reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

(7) Notwithstanding the provisions of subparagraph (6) above: (A) an NNMS

Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and (B) a NNMS 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 ACT and NNMS for NNM securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements. Provided however, that if Nasdaq finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(8) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraphs (b)(6) or (b)(7) of this rule.

(9) In the event that a malfunction in the NNMS Market Maker's equipment occurs, rendering on-line communications with NNMS inoperable, the NNMS Market Maker is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS and an excused withdrawal from Nasdaq. Such request must be made pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and the NNMS Market Maker will continue to be obligated for any transaction executed prior to the effectiveness of his withdrawal.

(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.

(c) NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS 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.

(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferred, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferred orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the

NNMS system shall enter an order into the system that exceeds 9,900.

(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1-1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with Nasdaq a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.

4711. Clearance and Settlement

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

4712. Obligation to Honor System Trades

If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing at the close of any trading day, or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

4713. Compliance with Rules and Registration Requirements

Failure by an NNMS Participant to comply with any of the rules or registration requirements applicable to NNMS identified herein shall subject such NNMS Participant to censure, fine, suspension or revocation of its registration as an NNMS Market Maker and/or Order Entry Firm or any other fitting penalty under the Rules of Nasdaq.

4714. Fees Applicable to NNMS

(a) A fee for orders executed through NNMS shall be assessed, to be allocated as follows: the NNMS Market Maker executing the order shall be assessed \$0.50 per transaction and the NNMS Order Entry Firm or NNMS Market Maker entering the order shall be assessed \$0.50 per order.

(b) For each order entered by an NNMS Order Entry Firm or an NNMS Market Maker that is canceled, the NNMS Order Entry Firm or NNMS Market Maker that cancels such order shall be assessed a fee of \$0.25.

4720. SelectNet Service

(a) Cancellation of a SelectNet Order

No member shall cancel or attempt to cancel an order, whether preferenced to a specific market maker or electronic communications network, or broadcast to all available members, until a minimum time period of ten seconds has expired after the order to be canceled was entered. Such ten second time period, shall be measured by the Nasdaq processing system processing the SelectNet order.

(b) Prohibition Regarding The Entry of Conditional Orders

No member shall enter an order into SelectNet that is preferenced to an electronic communications network covered by Rule 4623 that has any conditions regarding responses to the order, e.g. . preferenced SelectNet orders sent to electronic communications networks shall not be all or none, or subject to minimum execution size above a normal unit of trading, or deemed non-negotiable,

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers

No member may direct a SelectNet preferenced order to a Nasdaq National Market Execution System ("NNMS") market maker (as defined in NASD Rule 4701) including that market maker's Agency Quote (as defined in NASD Rule 4613) unless that order is designated as:

(i) an "All- or-None" order ("AON") and is at least one normal unit of trading (i.e. 100 shares) in excess of the displayed quote to which the preferenced order is directed; or

(ii) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed.

The prohibition of this paragraph shall not apply to preferenced orders sent by a UTP Specialist to an NNMS market maker or to preferenced orders sent by an NNMS market maker to a UTP Specialist. For purposes of this rule a "UTP Specialist" shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory 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/ NMS/UTP Plan").

4750. SMALL ORDER EXECUTION SYSTEM (SOES)

4751. Definitions

(a) The term "Small Order Execution System" or "SOES" shall mean the automated system owned and operated by Nasdaq which enables SOES Participants to execute transactions of limited size in active SOES authorized securities (i.e., Nasdaq SmallCap securities); to have reports of the transactions automatically forwarded to Nasdaq 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 SOES Participant(s) for clearance and settlement; and to provide SOES Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(b) The term "SOES Participant" shall mean either a SOES Market Maker or SOES Order Entry Firm registered as such with Nasdaq for participation in SOES.

(c) The term "SOES eligible securities" shall mean all Nasdaq SmallCap securities.

(d) The term "active SOES securities" shall mean those SOES eligible securities in which at least one SOES Market Maker is currently active in SOES.

(e) The term "SOES Market Maker" shall mean a member of Nasdaq that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in SOES with respect to one or more SOES eligible securities, and is currently active in SOES and obligated to execute orders for the purchase or sale of an active SOES security at the Nasdaq inside bid and/or ask price.

(f) The term "SOES Order Entry Firm" shall mean a member of Nasdaq who is registered as an Order Entry Firm for purposes of participation in SOES which permits the firm to enter orders of limited size for execution against SOES Market Makers.

(g) The term "maximum order size" shall mean the maximum size of individual orders for a security that may be entered into or executed through SOES. The maximum order size for each security shall be published from time to time by Nasdaq. In establishing the maximum order size for each SmallCap security, Nasdaq will give consideration to the average daily non-block volume, bid price, and number of market makers for each security. Maximum order size for Nasdaq SmallCap securities shall be 500 shares and may be adjusted on an issue by issue basis, depending upon unique characteristics of the issue as determined by Nasdaq.

(h) The term "agency order" shall mean public customer orders which are executed by the SOES Order Entry Firm on an agency basis. It shall also include, for purposes of these rules, an order entered into SOES on a principal basis by a SOES Order Entry Firm that is not a market maker in the SOES security, in SOES or otherwise, where the SOES Order Entry Firm has contemporaneously received an order from a customer and executes the transaction on a riskless principal basis.

(i) The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by Nasdaq which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

4752. SOES Participant Registration

(a) Participation in SOES as a SOES Market Maker requires current registration as such with Nasdaq. Such registration shall be conditioned upon the SOES Market Maker's initial and continuing compliance with the following requirements:

- (1) execution of a SOES Participant application agreement with Nasdaq;
- (2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which SOES compared trades may be settled;
- (3) registration as a market maker in Nasdaq pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of Nasdaq and the Commission;

- (4) maintenance of the physical security of the equipment located on the premises of the SOES Market Maker to prevent the unauthorized entry of information into SOES; and
- (5) acceptance and settlement of each SOES trade that SOES identifies as having been effected by such SOES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified SOES trade by the clearing member on the regularly scheduled settlement date.
- (b) Pursuant to Rule 4611, participation as a SOES Market Maker shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security;
- (c) Participation in SOES as a SOES Order Entry Firm requires current registration as such with Nasdaq. Such registration shall be conditioned upon the SOES Order Entry Firm's initial and continuing compliance with the following requirements:
- (1) execution of a SOES Participant application agreement with Nasdaq;
 - (2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which SOES compared trades may be settled;
 - (3) compliance with all applicable rules and operating procedures of Nasdaq and the Commission;
 - (4) maintenance of the physical security of the equipment located on the premises of the SOES Order Entry Firm to prevent the unauthorized entry of information into SOES; and
 - (5) acceptance and settlement of each SOES trade that SOES identifies as having been effected by such SOES Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified SOES trade by the clearing member on the regularly scheduled settlement date.
- (d) The registration required hereunder will apply solely to the qualification of a SOES Participant to participate in SOES. Such registration shall not be conditioned upon registration in any particular eligible or active SOES securities.
- (e) Each SOES Participant shall be under a continuing obligation to inform Nasdaq of noncompliance with any of the registration requirements set forth above.

4753. Participant Obligations in SOES

(a) Registration

Upon the effectiveness of registration as a Market Maker or SOES Order Entry Firm, the SOES Participant may commence activity within SOES for exposure to orders or entry of orders, as applicable. The operating hours of SOES may be established as appropriate by Nasdaq. A SOES Market Maker may withdraw from and reenter SOES at any time, and without limitations,

during the operating hours of SOES. The extent of participation in Nasdaq by a SOES Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Market Makers

(1) A SOES Market Maker shall commence participation in SOES by initially contacting the Nasdaq Market Operations Center to obtain authorization for the trading of a particular SOES security and identifying those terminals on which the SOES information is to be displayed and thereafter by an appropriate keyboard entry which obligates the firm, so long as it remains a Market Maker in SOES:

(A) to execute individual preferred SOES orders equal to or smaller than the applicable maximum order size at the best bid or offer as disseminated by Nasdaq in any security for which it is a SOES market maker; and

(B) to execute individual unpreferred SOES orders equal to or smaller than the market maker's displayed quotation size when the market maker's quotation is at the best bid or offer as disseminated by Nasdaq, and, when the market maker's quotation is inferior to the best bid or offer as disseminated by Nasdaq, to execute individual unpreferred SOES orders up to the lesser of the market maker's displayed quotation size or the smallest quotation size of all the market makers whose quotations are at the best bid or offer as disseminated by Nasdaq.

A SOES Market Maker's displayed quotation size will be decremented upon the execution of an unpreferred SOES order equal to or greater than one normal unit of trading; provided, however, that the execution of an unpreferred SOES order that is a mixed lot (i.e., an order that is for more than a normal unit of trading but not a multiple thereof) will only decrement the SOES Market Maker's displayed quotation size by the number of shares represented by the number of round lots contained in the mixed lot order. After SOES has executed an order against a Market Maker, that Market Maker shall not be required to execute another unpreferred order at the same bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system, provided the Market Maker has not updated its quotation (bid, offer, or size) within such time period, in which case the Market Maker will become immediately eligible to receive another execution of an unpreferred order. This period of time shall initially be established as 17 seconds, but may be modified upon Commission approval and appropriate notification to SOES participants. All entries in SOES shall be made in accordance with the requirements set forth in the SOES User Guide.

(2) For each security in which the Market Maker is registered, the Market Maker may elect to have Nasdaq refresh its quotation automatically by an interval designated by the Market Maker, once its displayed quotation size on either side of the market in the security has been decremented to zero due to SOES executions. Nasdaq will refresh the market maker's quotation on the bid or offer side of the market, whichever is decremented to zero, by the interval designated, and will establish the Market Maker's displayed size to the maximum order size for that security; provided, however, that a Market Maker may elect to have Nasdaq refresh its bid or offer at the same price if the Market Maker's quotation size prior to any decrementation was equal to or greater than the maximum SOES order size for the security.

(3) Except as otherwise provided in subparagraph (10) below, at any time a locked or crossed market, as defined in Rule 4613(e), exists for a SmallCap security, SOES will execute orders against the quotations of SOES Market Makers at the inside price and in an amount equal to or smaller than the market maker's displayed quotation size. Those orders will be executed irrespective of any preference indicated by the Order Entry Firm. During locked or crossed markets, SOES will execute orders against those Market Makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon necessary Commission approval and appropriate notification to SOES participants.

(4) For each security in which a Market Maker is registered, the Market Maker may not enter orders into SOES for its proprietary account, but may enter orders on an agency or riskless principal basis into SOES. As used in this context, "riskless principal" means an order on a principal basis entered into SOES on behalf of a customer by a Market Maker and which otherwise meets the requirements of the term "riskless principal" as used in Rule 4632(d)(3)(B).

(5) The Market Maker may terminate his obligation by keyboard withdrawal (or its equivalent) from SOES at any time. However, the Market Maker has the specific obligation to monitor his status in SOES 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. A Market Maker whose bid or offer has been decremented to zero due to SOES executions and who does not reenter a quotation by the close of business on the day its quotation is decremented shall be deemed to have withdrawn as a market maker in the security and precluded from re-registering in that security for twenty (20) business days pursuant to Rule 4620.

(6) A Market Maker that fails to reenter a two-sided quotation in a SmallCap security within the allotted time will be deemed to have withdrawn as a Market Maker ("SOESed out of the Box"). Except as provided below in this subparagraph and in subparagraph (7), a Market Maker that withdraws in a SmallCap security may not re-register as a Market Maker in that security for twenty (20) business days.

(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Market Operations as soon as practicable under the circumstances, but within at least one hour of having been SOESed out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year,

the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iii) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time of the SOES exposure limit exhaustion;

b. the frequency with which the firm has been SOESed out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently SOESed out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(ii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

(7) Notwithstanding the provisions of subparagraph (6) above: (A) a Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from SOES may reenter SOES according to the conditions of its withdrawal; and (B) a 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 ACT and SOES, y reenter SOES after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements. Provided however, that if Nasdaq finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(8) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Market Makers seeking review of their removal from SOES pursuant to subparagraphs (5),(6), or (7) above.

(9) In the event that a malfunction in the Market Maker's equipment occurs, rendering on-line communications with SOES inoperable, the SOES Market Maker is obligated to immediately contact the Nasdaq Market Operations Center by telephone to request withdrawal from SOES and an excused withdrawal from Nasdaq. Such request must be made pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into SOES from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and the SOES Market Maker will continue to be obligated for any transaction executed prior to the effectiveness of his withdrawal.

(10) In the event that there are no SOES market makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into SOES will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.

(c) SOES Order Entry Firms

(1) All entries in SOES shall be made in accordance with the procedures and requirements set forth in the SOES User Guide. Orders may be entered in SOES by the SOES 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.

(2) SOES will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that SOES will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less. Orders may be preferenced to a specific SOES Market Maker or may be unpreferenced, thereby resulting in execution in rotation against SOES Market Makers. A Market Maker may indicate order entry firms from which it agrees to accept preferenced orders. If an order is received by a Market Maker from an order entry firm from which it has not agreed to accept preferencing, the order will be executed at the inside market on an unpreferenced basis and will be subject to a period of time between executions for market makers to update their quotations.

(3) Only agency orders no larger than the maximum order size, as defined herein, received from public customers may be entered by a SOES Order Entry Firm into SOES for

execution against a SOES Market Maker. Agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES.

(4) No member or person associated with a member shall utilize SOES for the execution of agency orders in a security in which the member is a Nasdaq market maker but is not a SOES Market Maker.

4754. Clearance and Settlement

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

4755. Obligation to Honor System Trades

If a SOES Participant, or clearing member acting on his behalf, is reported by SOES to clearing at the close of any trading day, or shown by the activity reports generated by SOES as constituting a side of a System trade, such SOES Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

4756. Compliance with Rules and Registration Requirements

Failure by a SOES Participant to comply with any of the rules or registration requirements applicable to SOES identified herein shall subject such SOES Participant to censure, fine, suspension or revocation of its registration as a SOES Market Maker and/or Order Entry Firm or any other fitting penalty under Nasdaq Rules.

4757. Fees Applicable to SOES

(a) A fee for orders executed through SOES shall be assessed, to be allocated as follows: the SOES Market Maker executing the order shall be assessed \$0.50 per transaction and the SOES Order Entry Firm or SOES Market Maker entering the order shall be assessed \$0.50 per order.

(b) For each order entered by a SOES Order Entry Firm or a SOES Market Maker that is canceled, the SOES Order Entry Firm or SOES Market Maker that cancels such order shall be assessed a fee of \$0.25.

Selected NASD Notices to Members: 88-43, 88-61, 88-103, 90-57, 91-67, 94-01.

4800. PROCEDURES FOR REVIEW OF NASDAQ LISTING DETERMINATIONS

4810. Purpose and General Provisions

(a) The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of Nasdaq that prohibit or limit the listing of an issuer's securities on Nasdaq based upon the Nasdaq Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing

standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, Nasdaq.

(b) An issuer may file a written request for an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a proceeding under the Rule 4800 Series. Nasdaq may grant extensions or exceptions where it deems appropriate.

(c) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel (as defined in Rule 4830), Nasdaq Listing and Hearing Review Council (the “Listing Council”), or the Nasdaq Board of Directors (the “Nasdaq Board”), as part of its respective review, may request additional information from the issuer. The issuer will be afforded an opportunity to address the significance of the information requested.

(d) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or Nasdaq Board, as part of its respective review, may consider the issuer’s bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information.

(e) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or Nasdaq Board, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond. In this regard, the issuer may be subject to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

4815. Written Notice of Staff Determination

If the Listing Qualifications Department or the Listing Investigations Department reaches a determination (the “Staff Determination”) to limit or prohibit the initial or continued listing of an issuer’s securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series. If the issuer does not request a hearing within the period specified in Rule 4820, the securities of the issuer will be suspended and Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules thereunder.

4820. Request for Hearing

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with The Nasdaq Office of Listing Qualifications Hearings (the “Hearings Department”). A request for a hearing will stay the delisting action pending the issuance of a written determination by a Listing Qualifications Panel. If no hearing is requested within the seven calendar day period, the Staff Determination will take immediate effect. All hearings will be held before a Listing Qualifications Panel as described in Rule 4830. All hearings will be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department will make an acknowledgment of the issuer’s hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer will be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Hearings Department stating the specific grounds for the issuer’s contention that the Staff Determination was in error or requesting an extension of time to comply with the listing requirements or an exception to those requirements, as permitted by Rule 4810. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Staff Determination.

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to Nasdaq to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of written submission from the issuer, \$1,400; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$2,300.

4830. The Listing Qualifications Panel

(a) All hearings will be conducted before an independent panel (the “Listing Qualifications Panel”) composed of at least two persons, not employees of Nasdaq or its subsidiaries, designated by the Nasdaq Board of Directors. No person shall serve as a Listing Qualifications Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter.

(b) Prior to the hearing, the Listing Qualifications Panel will review the written record, as defined in Rule 4870. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants,

counsel, investment bankers, or other persons. Hearings are generally scheduled to last one hour, but may be extended at the discretion of the Listing Qualifications Panel. The Listing Qualifications Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings will be kept. The record of proceedings before a Listing Qualifications Panel will be kept by the Hearings Department.

(c) After the hearing, the Listing Qualifications Panel will issue a written decision (the “Panel Decision”) describing the specific grounds for the determination and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The Panel Decision will be promptly provided to the issuer and is effective immediately unless it specifies to the contrary. If the Panel determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Panel Decision specifies to the contrary. The Panel Decision will provide notice that the issuer may request review of the Panel Decision by the Nasdaq Listing and Hearing Review Council (the “Listing Council”) within 15 calendar days of the date of the Panel Decision and that the Panel Decision may be called for review by the Listing Council within 45 calendar days from the date of the Panel Decision pursuant to Rule 4840.

(d) If the Panel determines to delist the issuer and the issuer does not timely request review by the Listing Council and the Listing Council does not call the matter for review, Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules thereunder.

4840. Review by the Nasdaq Listing and Hearing Review Council

(a) The Nasdaq Listing and Hearing Review Council (the “Listing Council”) is a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-laws whose responsibilities include the consideration of determinations to limit or prohibit the listing of an issuer’s securities.

(b) The issuer may initiate the Listing Council’s review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of General Counsel. The request will not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of \$1,400 to Nasdaq to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of General Counsel will make an acknowledgment of the issuer’s request stating the deadline for the issuer to provide any written submissions.

(c) The Listing Council may also consider any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The issuer will be promptly informed of the reasons for the review and

will be provided a deadline to provide a written submission if the issuer wishes. The institution of discretionary review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. At the sole discretion of the Listing Council, the call for review of a Panel Decision may be withdrawn at any time prior to the issuance of a decision.

(d) The Listing Council will consider the written record and, at its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listing Council, is made. The Listing Council may also recommend that the Nasdaq Board of Directors (the “Nasdaq Board”) consider the matter. The record of proceedings before the Listing Council will be kept by the Nasdaq Office of General Counsel.

(e) The Listing Council will issue a written decision (the “Listing Council Decision”) that affirms, modifies, or reverses the Panel Decision or that refers the matter to Nasdaq staff or to the Listing Qualifications Panel for further consideration. The Listing Council Decision will describe the specific grounds for the decision, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that the Nasdaq Board may call the Listing Council Decision for review at any time before its next meeting which is at least 15 calendar days following the issuance of the Listing Council Decision. The Listing Council Decision will be promptly provided to the issuer and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(f) If the Listing Council determines to delist the issuer and the Nasdaq Board does not call the matter for review, Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules thereunder.

4850. Discretionary Review by Nasdaq Board

(a) A Listing Council Decision may be called for review by the Nasdaq Board solely upon the request of one or more Governors not later than the next Nasdaq Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review will be undertaken solely at the discretion of the Nasdaq Board.

(b) If the Nasdaq Board conducts a discretionary review, the review generally will be based on the written record considered by the Listing Council. However, the Nasdaq Board may, at its discretion, request and consider additional information from the issuer and/or from Nasdaq staff. Should the Board consider additional information, the record of proceedings before the Nasdaq Board will be kept by the Nasdaq Office of General Counsel.

(c) If the Nasdaq Board conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The Nasdaq Board may affirm, modify or reverse the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or Nasdaq staff with appropriate instructions. This decision represents the final action of Nasdaq and will take immediate effect unless it specifies to the contrary. If the Nasdaq Board determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules thereunder.

(d) If the Nasdaq Board declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Listing Council Decision represents the final action of Nasdaq.

4870. Record on Review

(a) Documents in the written record may consist of the following items, as applicable: correspondence between Nasdaq and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer or the Listing Qualifications Department or the Listing Investigations Department, including any written request for an extension or exception as permitted in Rule 4810(b) and any response thereto. Any additional information requested from the issuer by the Listing Qualifications Panel, Listing Council, or Nasdaq Board as part of the review process will be included in the written record. The written record will be supplemented by the transcript of any hearings held during the review process and each decision issued. At each level of review under this Rule 4800 Series, the issuer will be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for issuer submissions, unless the issuer waives such production.

(b) In addition to the documents described in paragraph (a) above, if the issuer's bid price, market makers, or any information that the issuer releases to the public, is considered as permitted in Rule 4810, that information, and any written submission addressing the significance of that information, will be made part of the record.

(c) If additional issues arising under the Rule 4000 Series are considered, as permitted in Rule 4810, the notice of such consideration and any response to such notice will be made a part of the record.

4875. Document Retention Procedures

Any document submitted to Nasdaq in connection with a Rule 4800 proceeding that is not made part of the record will be retained by Nasdaq until the date upon which the Rule 4800 Series proceeding decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court.

4880. Delivery of Documents

Delivery of any document under this Rule 4800 Series by an issuer or by Nasdaq may be made by hand delivery to the designated address, or by facsimile to the designated facsimile number and overnight courier to the designated address. Delivery will be considered timely if hand delivered prior to the relevant deadline or upon being faxed and/or sent by overnight courier service prior to the relevant deadline. If an issuer has not specified a facsimile number or address, delivery will be made to the last known facsimile number and address. If an issuer is represented by counsel or a representative, delivery will be made to the counsel or representative.

4885. Computation of Time

In computing any period of time under the Rule 4800 Series, the day of the act, event, or default from which the period of time begins to run is not to be included. The last day of the period so computed is included, unless it is a Saturday, Sunday, federal holiday, or Nasdaq holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Nasdaq holiday.

4890. Prohibited Communications

(a) Unless on notice and opportunity for the appropriate Nasdaq staff and the issuer to participate, a representative of Nasdaq involved in reaching a Staff Determination, or an issuer, counsel to or representative of an issuer shall not make or knowingly cause to be made a communication relevant to the merits of a proceeding under this Rule 4800 Series (a "Prohibited Communication") to any member of the Listing Qualifications Panel or the Listing Council, to any Director of the Nasdaq Board who is participating in or advising in the decision in that proceeding, or to any Nasdaq employee who is participating or advising in the decision of these individuals.

(b) Listings Qualifications Panel members, Listing Council members, Governors of the Nasdaq Board and Nasdaq employees who are participating in or advising in the decision in a proceeding under this Rule 4800 Series, shall not make or knowingly cause to be made a Prohibited Communication to an issuer, counsel to or representative of an issuer, or a representative of the Association involved in reaching a Staff Determination.

(c) If a Prohibited Communication is made, received, or caused to be made, Nasdaq will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Nasdaq will permit its staff or the issuer, as applicable, to

respond to the Prohibited Communication, and will place any response in the record of the proceeding.

(d) If the issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, that submission will constitute a waiver of any claim that Nasdaq communications relating to the proposal were Prohibited Communications.

4900. NASDAQ APPLICATION

4901. Definitions

(a) The term "Application" (or "Nasdaq Application") as used in these rules shall mean the Nasdaq trading service facility for Eligible Securities made available from: (1) Nasdaq Workstation Service through the Nasdaq-provided network(s); and (2) telecommunications access services through the OptiMark-provided network(s) (which may include appropriate access provided through third parties), which facility permits the entry and transmission of Profiles to the OptiMark Matching Module for participation in a Cycle and the execution and trade reporting of the resulting transactions, all in accordance with these rules and other applicable rules and policies of Nasdaq.

(b) The term "Cycle" as used in these rules shall mean the series of calculations performed by the OptiMark Matching Module to process Profiles available at commencement of such Cycle into Orders.

(c) The term "Designated Broker" as used in these rules shall mean a Nasdaq member who has been designated by a User to execute, clear, and settle transactions resulting from the Application. Participation as a Designated Broker shall be conditioned upon the Designated Broker's membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act. Only Designated Brokers that are members of a registered clearing agency ("Designated Broker/Clearing Broker") are permitted to establish trading limits for Users.

(d) The term "Designated Broker Consent Agreement" as used in these rules shall mean the form of Agreement between the Designated Broker and OptiMark Services, Inc. or OptiMark OTC services, Inc. under which the Designated Broker authorizes the Orders of a User to be automatically routed, executed, and reported in the Designated Broker's name.

(e) The term "Electronic Data Interchange" ("EDI") as used in these rules shall mean a screen-based electronic communications facility with an appropriate audit trail that enables Designated Brokers to establish or modify trading or alert limits for the purposes of Profile validation by (1) submitting such trading instructions on-line and (2) receiving notifications on-line when their instructions have been received and when they have been implemented.

(f) The term "Eligible Securities" as used in these rules shall mean the equity securities currently listed on Nasdaq .

(g) The term "Nasdaq Quote Montage Profile" as used in these rules means the satisfaction profile generated from processing the eligible quotations from Nasdaq Market Makers, electronic communications networks ("ECNs"), and UTP Exchange Plan Specialists as displayed in the Nasdaq Quote Montage.

(h) The term "OptiMark Matching Module" as used in these rules shall mean the electronic communications, matching process software, and information system operated by OptiMark Services Inc. to support the trading service offered by Nasdaq as its facility.

(i) The term "Orders" as used in these rules shall mean one or more orders generated from a Cycle at specific prices and sizes at which execution immediately may occur. Orders in Eligible Securities for execution shall be in round lots equal to or greater than 1,000 shares, except for Orders resulting from processing the Nasdaq Quote Montage Profiles (as defined in these rules) that may be in any round lot size, and in price increments conforming to the requirements of Nasdaq trading system rules and system requirements applicable to all Orders executed in Nasdaq. Such Orders shall include the following information:

- (1) the stock ticker symbol;
- (2) a designation as "buy," "sell long," "sell short" or "sell short exempt"; and
- (3) such other information as may be required by the Board of Nasdaq .

(j) The term "Profile" as used in these rules shall mean the expression of trading interest received by the OptiMark Matching Module in the form of a satisfaction profile that shows the User's degree of satisfaction (expressed as a number between zero and one) to trade at each coordinate of the price/size grid.

(k) The term "Supplemental Account Agreement" as used in these rules shall mean the form of Agreement between a User and a Designated Broker/Clearing Broker under which Orders of the User and resulting transactions will be executed, cleared and settled, using the Designated Broker/Clearing Broker's mnemonic.

(l) The term "User" as used in these rules shall mean a subscriber who has entered into an appropriate subscription agreement ("User Agreement") with OptiMark Services, Inc.

4902. Access

The Nasdaq Application shall be available for all interested Nasdaq members that decide to become Users. A User that is a Nasdaq member that is not a Clearing Broker,

as defined in Rule 6100(f), or a non-member User may obtain access to the Nasdaq Application only if such access is authorized in advance by one or more Designated Brokers that are Clearing Brokers in accordance with the terms of the Supplemental Account Agreement, if used, and the Designated Broker Consent Agreement. At a minimum, the Designated Broker Consent Agreement shall include any applicable trading limits imposed by the Designated Broker/Clearing Broker on the User; the Designated Broker's undertaking that it is responsible for that User's Orders and resulting transactions; and such other terms and conditions that may be agreed to from time to time. Nasdaq shall be provided with a written statement from the Designated Broker acknowledging its responsibility for such Orders and resulting transactions.

4903. Entry of Profiles and Generation of Orders

(a) Entry of Profiles

Users shall submit Profiles through an appropriate network that has access to the Nasdaq Application, which Profiles shall be appropriately validated against any applicable credit limits. The User Agreement shall describe the functions and features of the Nasdaq Application as well as acceptable Profiles.

(b) Nasdaq Quote Montage Profiles

In addition to Profiles entered directly by Users, each Cycle shall include the Nasdaq Quote Montage Profiles reflecting all bids and offers quotes as reflected in the Nasdaq Quote Montage immediately prior to commencement of that cycle and that could potentially be traded through by a Profile.

(c) Central Processing

Profiles available when a Cycle commences, including the Nasdaq Quote Montage Profiles, shall be centrally processed by the OptiMark Matching Module into Orders, based on a computer algorithm that measures and ranks all relevant mutual satisfaction outcomes by matching individual coordinates from intersecting buy Profiles and sell Profiles. Buy and sell coordinates eligible for matching shall result in Orders when they are matched by the OptiMark Matching Module in accordance with:

- (1) priority based on price, standing, time of entry, and size when considering potential matches only between eligible buy and sell coordinates each of which represents the full satisfaction value to trade at the associated price and size; and
- (2) priority based on mutual satisfaction, time of entry, and size, when considering all other potential matches; provided however, that no Orders may be generated in violation of applicable User instructions such as the maximum quantity of shares to be bought or sold or any additional boundary conditions.

(d) Frequency

Cycles for an Eligible Security shall be scheduled at one or more specified times throughout the trading day after the opening of the market in that security, and prior to the closing of the market. The maximum frequency with which Cycles may take place throughout the trading day shall be 90 seconds, while the minimum shall be once a day. The exact frequency of Cycles as to any given Eligible Security shall be determined by Nasdaq, in consultation with OptiMark, based on the general characteristics of the security, the robustness of the associated Profile flow over a period, and the current level of interest expressed by Users. The frequency may be subsequently altered in response to subsequent developments in the above-stated market circumstances. Any change in the frequency of Cycles will be effective upon three (3) business-days' advance notice to all Users; provided, however, that at all relevant times, Nasdaq finds any such scheduling of Cycles to be commensurate with the demand for the Nasdaq Application among members and their customers and also consistent with the safeguards in place to ensure system capacity and integrity.

4904. Order Execution, Reporting, and Clearing

(a) Orders in Eligible Securities generated from a Cycle shall be executed immediately thereafter and reported through Nasdaq systems, except to the extent that those Orders representing the matched coordinates from the Nasdaq Quote Montage Profiles with other Profiles will be routed for execution under the rules of the applicable Nasdaq trading system used to obtain access to the displayed quotations in the Nasdaq Quote Montage. If the quotation against which a contra Profile was matched has been executed or canceled, in whole or in part, prior to delivery from the Nasdaq Application, the Orders generated by the Nasdaq Application shall be canceled without imposing any liability against the displayed quotation. In the case of any Orders delivered from the Nasdaq Application to any UTP Plan Exchange Specialist, those executed by the Exchange shall be considered executed and reported on such Exchange. Orders executed and reported through Nasdaq systems shall be immediately reported to the public tape on behalf of the sell-side member. All Users will receive a report of any execution resulting from processing the Profiles submitted by them (including any execution resulting against a displayed quotation) as soon as possible after the execution takes place, and the Designated Brokers generally will be notified promptly after the close of the trading day when transactions are appropriately allocated for clearing purposes.

(b) Clearance and Settlement Responsibility - Designated Brokers are the parties responsible for the clearance and settlement of all trades executed through the Nasdaq Application. Neither Nasdaq (and its affiliates and subsidiaries) nor any operator of the OptiMark Matching Module (e.g., OptiMark Services, Inc.) or any component of the Nasdaq Application shall be, directly or indirectly, a party to or a participant in any transaction entered into or otherwise conducted through the Nasdaq Application. If a User or Designated Broker that enters or authorizes the entry of a Profile that results in a transaction through the Nasdaq Application fails to perform its settlement or other

obligations under the terms of such transaction, Nasdaq (and its affiliates and subsidiaries) and the system's operator(s) shall have no liability for such failure to settle.

4905. Short Sales In the Nasdaq Application

Nasdaq's short sale rule shall apply with respect to profiles entered into the OptiMark Match Module as follows. At the time of entry of a Profile, the User entering the Profile must indicate whether the Profile would result in the entry of an Order that would be a short sale, and whether such short sale would be exempt or not. At the time that a Cycle is to commence, the OptiMark Match Module shall capture the bid indicator to determine whether profiles that indicate that they are short sales may participate in the generation of the subsequent matching of Orders. Any profiles that indicate that the subsequent sale would be a non-exempt short sale shall be excluded by OptiMark from the match process to the extent a resulting transaction would be prohibited by the short sale rule.

4906. Hours of Operation

The Nasdaq Application will be available for execution of Orders during the regular Nasdaq trading hours, except that no Cycle shall commence prior to 9:45 a.m. (ET) or after 3:45 p.m. (ET).

4907. Trading Suspensions and Halts

In the event of a suspension or halt in trading of an Eligible Security pursuant to Nasdaq or SEC Rules, Nasdaq shall suspend the related trading activities respecting that security through the Nasdaq Application. In addition, the trading activities through the Nasdaq Application respecting all Eligible Securities shall halt whenever the Chairman or, in the Chairman's absence, the President, or other Nasdaq Officer(s) as the Chairman may designate, determines that market conditions warrant such a halt pursuant to Nasdaq Market Emergency Rules contained in Rule 0130. Nasdaq may suspend the trading activities through the Nasdaq Application relating to one or more Eligible Securities at any other time, if deemed necessary and appropriate for the protection of investors or to preserve system capacity and integrity.

4908. Limitation of Liability

(a) Neither Nasdaq, any affiliate, nor any operator, licensor, or administrator of the OptiMark Matching Module shall have any liability to Users or Designated Brokers for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from: (1) the Nasdaq Application; or (2) the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the Nasdaq Application, resulting either from any act or omission by Nasdaq or any affiliate, or any operator, licensor or administrator of the Nasdaq Application or from any act, condition or cause beyond the reasonable control of Nasdaq or any affiliate, or any operator, licensor or administrator of the Nasdaq Application, including, but not limited to, flood, extraordinary weather conditions,

earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

(b) Neither Nasdaq, any affiliate, nor any operator, licensor, or administrator of the Nasdaq Application makes any express or implied warranties or conditions to Users or Designated Brokers as to results that any person or party may obtain from the Nasdaq Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Nasdaq Application are hereby disclaimed.

4909. Trading Parameters for Initial Operations

Notwithstanding any other provisions set forth above in Rules 4902 through 4908 to the contrary, the Nasdaq Application initially shall be subject to the following parameters:

(a) The total number of Eligible Securities traded through the Application shall be limited to a maximum of the 250 issues approved specifically by Nasdaq; provided that, prior to the implementation of an appropriate EDI facility, no more than 10 issues selected from the approved list of the 250 Eligible Securities may be traded through the Application. Nasdaq may amend the approved list of the 250 Eligible Securities by filing a rule change proposal with the SEC pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (effective upon filing).

(b) The maximum frequency with which Cycles may take place throughout the trading day shall be 5 minutes; provided, however that no Cycle may take place at any time during a trading day when Nasdaq has suspended all trading activities through the Nasdaq Application pursuant to paragraph (c) below.

(c) If, during any part of a trading day prior to 2:50 p.m. (ET), the cumulative total daily share volume of the transactions resulting from all Cycles that are executed and reported through Nasdaq systems since the opening of the regular trading hours on that day ("Application Volume") equals or exceeds 12.5% of the "Volume Trigger" of the day as defined in paragraph (d) below, all trading activities through the Nasdaq Application shall be suspended immediately thereafter for 15 minutes. Trading activities shall resume upon expiration of the 15-minute halt and may continue until the regularly scheduled close of the Nasdaq Application. Notwithstanding any of the foregoing provisions to the contrary, if, during any part of a trading day prior to 2:50 p.m. (ET), the Application Volume equals or exceeds 15% of the Volume Trigger, all trading activities through the Nasdaq Application shall be suspended immediately thereafter for the remainder of the trading day.

(d) For purposes of this Rule 4999, the term "Volume Trigger" of a trading day shall refer to the share-volume equivalent (based on a weighted average dollar price) of

the average daily aggregated dollar volume of all transactions, including those resulting from all Cycles, that are executed and reported through Nasdaq systems in the current approved list of the 250 Eligible Securities, for the preceding 30 consecutive trading days.

ⁱ Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

ⁱⁱ Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number. Information communicated orally should be confirmed promptly in writing. The fax number is (240) 386-6047.

ⁱⁱⁱ Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market, the New York Stock Exchange, and the American Stock Exchange.

^{iv} Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market, the New York Stock Exchange, and the American Stock Exchange.

^v Nasdaq may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

^{vi} In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.

^{vii} If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

^{viii} This provision is designed to address situations where a company attempts to obtain a "backdoor listing" on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

^{ix} This notice shall be made to the MarketWatch Department at 9513 Key West Avenue, Rockville, Maryland 20850-3389. The telephone numbers are 1-800-537-3929 and (240) 386-6046. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

^x This notice shall be made to the MarketWatch Department at 9513 Key West Avenue, Rockville, Maryland 20850-3389. The telephone numbers are 1-800-537-3929 and (240) 386-6046. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

^{xi} * The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded). If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of designation.

^{xii} The term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the Nasdaq SmallCap Market. In the case of units, each component, but not the unit itself, shall be considered separately as an "equity security" for fee purposes.

^{xiii} See notes to Rule 4520(a)(1)(B)(i), above.

xiv

The threshold standards initially shall be established as:

- (a) a market maker must maintain the best bid or best offer as shown on Nasdaq no less than 35% of the time;
- (b) a market maker must maintain a spread no greater than 102% of the average dealer spread;
- (c) no more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading.

Nasdaq reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.

xv

The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the stock for the review period.