

# NASDAQ UNIFORM PRACTICE CODE

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## **11000. UNIFORM PRACTICE CODE**

### **11100. SCOPE OF UNIFORM PRACTICE CODE**

(a) Transactions executed through the facilities of the Nasdaq Market Center, including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members shall be subject to the provisions of this Code. However, the provisions of this Code shall not apply to transactions between members that are compared, cleared or settled through the facilities of a registered clearing agency (except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply). Accordingly, because Nasdaq Rule 4618 contemplates that Nasdaq Market Center transactions will be settled through the facilities of a registered clearing agency using a continuous net settlement system, the provisions of the Code relating to clearance and settlement will apply to Nasdaq Market Center transactions only in unusual circumstances in which trades are settled “ex-clearing”.

(b) The scope of coverage contained in paragraph (a) above may be expanded or limited in any Rule of this Code if specifically provided therein.

(c) With respect to transactions executed on Nasdaq, failure to deliver the securities sold, or failure to pay for securities as delivered, on or after the settlement date, does not effect a cancellation of the contract. The remedy for the buyer or seller is provided for by Rules 11810 and 11820 respectively unless the parties mutually consent to cancel the trade. In every such case of nondelivery of securities, the party in default shall be liable for any damages which may accrue thereby. All claims for such damages shall be made promptly.

(d) The CUSIP number must be used on the Uniform Transfer Instruction Form, Uniform Delivery Ticket and the Uniform Comparison or Confirmation.

### **11110. Nasdaq Regulation**

Nasdaq Regulation shall have the power to issue interpretations or rulings with respect to the applicability of this Code to situations in which there is no substantial disagreement as to the facts involved in order to make custom, practice, usage, and trading technique in the investment banking and securities business uniform, to simplify and facilitate day-to-day business of members and to remove causes for business disputes and misunderstandings which arise from uncertainty and lack of uniformity, including rulings in connection with “when, as and if issued” trading and “when, as and if distributed” trading, and whether a security tendered is a good delivery in settlement of such contracts.

### **IM-11110. Refusal to Abide by Rulings of Nasdaq Regulation staff**

It shall be considered conduct inconsistent with just an equitable principles of trade for any member to refuse to abide by an official ruling of Nasdaq Regulation, acting

within its appropriate sphere, with respect to any transaction which was consummated within the provisions and purview of the Uniform Practice Code.

## **11120. Definitions**

### **(a) Nasdaq Regulation**

The term “Nasdaq Regulation” as used in this Code, unless the context otherwise requires, shall mean the Department of Nasdaq that administers this Code.

### **(b) Delivery Date**

The term “delivery date” as used in this Code shall be used interchangeably with “settlement date” and shall mean the date designated for the delivery of securities.

### **(c) Ex-Date**

The term “ex-date” as used in this Code shall mean the date on and after which the security is traded without a specific dividend or distribution.

### **(d) Immediate Return Receipt**

The term “immediate return receipt” as used in this Code, shall mean the acknowledgement by the receiving member of a written notice and which shall be issued, upon receipt, via the media in which such notice is received.

### **(e) Record Date**

The term “record date” as used in this Code means the date fixed by the trustee, registrar, paying agent or issuer for the purpose of determining the holders of equity securities, bonds, similar evidences of indebtedness or unit investment trust securities entitled to receive dividends, interest or principal payments or any other distributions.

### **(f) Reserved**

### **(g) Written Notices**

The term “written notice,” as used in this Code, shall include a notice delivered by hand, by letter, teletype, telegraph, TWX, facsimile (“FAX”) transmission or other comparable media.

## **11130. When, As and If Issued/Distributed Contracts**

### **(a) Confirmations or Comparisons**

(1) Each party to the transaction shall send a written “when, as and if issued” or “when as and if distributed” confirmation or comparison in the same

form as set forth in the Sample Form appearing after this Rule 11130 and pursuant to the requirements of Rules 11210(a), 11220, and 11860.

(2) Each confirmation or comparison covering a contract in a “when, as and if issued” or “when, as and if distributed” security shall, at a minimum, contain:

(A) an adequate description of the security and the plan, if any, under which the security is proposed to be issued or distributed;

(B) designation of Nasdaq as the authority which shall rule upon the performance of the contract; and

(C) provision for marking the contract to the market.

(3) Nasdaq Regulation will furnish, upon written request therefor, an adequate description of any particular issue of securities and of the plan under which the securities are proposed to be issued for the purpose of inclusion in all contracts or confirmations covering transactions on a “when, as and if issued” or “when, as and if distributed” basis in the particular securities.

**(b) Accrued Interest**

(1) Unless the parties agree otherwise, “when, as and if issued” or “when, as and if distributed” transactions between members in fixed obligations of new or reorganized companies shall be “and accrued interest” to date of settlement. Interest shall be computed on the basis of the expired portion of the coupon current at the time of settlement, and all due and past due coupons shall be detached.

(2) “When, as and if issued” or “when, as and if distributed” transactions between members in income or contingent interest securities of such companies shall be traded “flat” and shall carry all payments that may be made or declared in connection with such new securities from the effective date of the plan; except that, if any payment is made or declared directly or indirectly in connection with such securities, prior to the settlement date, transactions made on and after the “ex” date for such payment shall carry only payments made or declared in connection with such securities from such “ex” date.

(3) Securities of such companies which bear a fixed rate of interest, plus contingent additional payment, are to be traded “and accrued interest” at the rate of the fixed interest, and traded “flat” in respect to the contingent payments.

**(c) Marks to the Market**

In case of “when, as and if issued” or “when, as and if distributed” contracts, the time of issuance or distribution of the securities is indefinite and may be long delayed.

Therefore, such contracts should be marked to the market pursuant to the provisions of Rule 11740 of the Code.

**(d) Contracts on Margin**

All “when, as and if issued” or “when, as and if distributed” contracts shall be in compliance with Sections 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System.

**(e) Request for Deposits**

A member may require a customer to deposit cash or collateral to secure a “when, as and if issued” or “when, as and if distributed” contract even though Section 220.8(b)(1) of Regulation T of the Board of Governors of the Federal Reserve System may not require such deposit.

**(f) Segregation of Funds**

(1) Deposits against “when, as and if issued” or “when, as and if distributed” transactions should be segregated on the books of the firm in order to present a true picture of the firm’s position and its commitment in transactions of this kind. It may be appropriate to segregate such deposits from the firm’s general cash balances by depositing them in a bank other than those containing the general deposits, loans or other obligations of the firm. Whether or not such physical segregation is made, no member should permit any part of deposits against “when, as and if issued” or “when, as and if distributed” contracts to be used for any purpose whatsoever other than to secure such contracts.

(2) As a minimum, every member doing business in “when, as and if issued” or “when, as and if distributed” securities shall ensure that the sum of the cash balances and any deposits with banks, clearing houses, or other brokers against “when, as and if issued” or “when, as and if distributed” contracts always exceeds the aggregates of all free credits and deposits against “when, as and if issued” or “when, as and if distributed” contracts by an amount fully ample to conduct his business without employing any part of such deposits.

**(g) Settlement of Contracts**

(1) A date for the settlement of “when, as and if issued” and “when, as and if distributed” contracts shall be determined by Nasdaq Regulation when a sufficient percentage of the issue is outstanding.

(2) In connection with a transaction in a security “when, as and if issued,” delivery shall be made at the office of the purchaser on the date declared by Nasdaq Regulation; except that if no delivery date shall be declared by Nasdaq Regulation:

(A) delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver, and

(B) open market “when, as and if issued” contracts in securities currently being publicly offered through a syndicate or selling group shall be settled on the date such syndicate or selling group contracts are settled; provided, however, delivery of securities in accordance with this paragraph shall be made during the normal delivery hours in the community where the buyer is located.

(3) In connection with a transaction in a security “when, as and if distributed,” delivery shall be made at the office of the purchaser on the date declared by Nasdaq Regulation; except that if no delivery date shall be declared by Nasdaq Regulation, delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver.

**(h) Cancellation of Contracts**

(1) Pursuant to Rule 11110, Nasdaq Regulation may cancel or terminate “when, as and if issued” and “when, as and if distributed” contracts as necessary to resolve conflicts over the settlement of such contracts.

(2) Contracts will be canceled if the securities are not to be issued or distributed.

(3) Contracts will generally be canceled if the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. Material changes which will generally result in cancellation include, but are not limited to, changes to the redemption schedule, dividend payments, interest rates, maturity, yield, and exercise price.

(4) Notwithstanding paragraph (h)(3), contracts will not generally be canceled as a result of changes that do not constitute material changes to the terms of the security called for under the contract. Changes which will not generally result in cancellation include, but are not limited to:

(A) changes in the dollar value of securities to be issued or distributed;

(B) restructuring of financing arrangements previously announced by the issuer of the securities; or

(C) settlement of any legal action or the occurrence of any other event which has or will have a material effect on the financial condition of the issuer of the securities.



**IM-11130. Standard Forms of “When, As and If Issued” or “When, As and If Distributed” Contract**

**(a) For use by dealers and brokers in confirming transactions with other dealers and brokers**

“When, as and if Issued” or “When, as and if Distributed” Contract

.....

(Firm Name)

Date.....

Sold to – Quantity.etc. Table Here

If this contract was made on a national securities exchange other than Nasdaq, the contract shall be subject to and governed by the requirements of such other exchange, its constitution, rules, practices and interpretations thereof, relating to contracts between members of such exchange, as the same may be amended or modified from time to time.

If this contract was made elsewhere than on a national securities exchange, it shall be subject to and governed by the requirements of the NASD, its By-Laws, Rules, Uniform Practice Code and interpretations thereof as the same may be amended or modified from time to time.

This contract shall be settled and payment therefor made at such time and place, in such manner, and by the delivery of such securities and/or other property as the exchange or association to whose requirements this contract is subject in its sole discretion may determine, or shall be canceled and thereafter shall be null and void if such exchange or association determines in its sole discretion that the securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. During the pendency of this contract either party shall have the right to call for a mark to the market, and upon failure of the other party to comply therewith the party not in default may close this contract in accordance with the requirements of the exchange or association to whose requirements this contract is subject.

**(b) For use by a dealer (principal) and his customer covering transactions on a principal basis**

.....

Date

“When, as and if Issued” or “When, as and if Distributed” Contract

TO.....

I/we have sold to you/purchased from you.....shares/par value.....  
at..... These securities shall be payable and deliverable “when, as and if issued” or “when, as and if distributed,” or this contract shall be cancelable in accordance with the requirements of the Nasdaq Rules, Uniform Practice Code and interpretations thereof.

I/we shall have the right to demand deposits according to such requirements. On your failure to comply therewith, we may close the contract in accordance with such requirements.

.....

(Firm Signature)

Accepted:

.....

(Signature of Customer)

**11140. Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”**

**(a) Designation of Ex-Date**

All transactions in securities, except “cash” transactions, shall be “ex-dividend,” “ex- rights” or “ex-warrants”: (1) on the day specifically designated by Nasdaq Regulation after definitive information concerning the declaration and payment of a dividend or the issuance of rights or warrants has been received at the office of Nasdaq Regulation; or (2) on the day specified as such by the appropriate national securities exchange which has received definitive information in accordance with the provisions of SEC Rule 10b-17 concerning the declaration and payment of a dividend or the issuance of rights or warrants.

**(b) Normal Ex-Dividend, Ex-Warrants Dates**

(1) In respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security, if the definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” shall be the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date.

(2) In respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security, the ex-dividend date shall be the first business day following the payable date.

(3) In respect to stock dividends and/or splits relating to American Depository Receipts (ADRs) and foreign securities, the ex-dividend or ex-warrants date shall be designated by Nasdaq Regulation.

**(c) Late Information Re: Ex-Dividend, Ex-Warrants Dates**

If definitive information is not received sufficiently in advance of the record date to permit designation of an ex-dividend or ex-warrants date in accordance with paragraph (b)(1) hereof, the date designated shall be the first business day which, in the opinion of Nasdaq Regulation, shall be practical having regard to the circumstances pertaining.

**(d) Normal Ex-Rights Dates**

In respect to transferable rights subscription offerings, if definitive information is received sufficiently in advance of the effective date of the registration statement, the date designated as the ex-rights date shall be the first business day after the effective date of the registration statement.

**(e) Late Information Re: Ex-Rights**

If definitive information is not received sufficiently in advance of the effective date of the registration statement to permit designation of an ex-rights date in accordance with the paragraph (d) hereof, the date designated shall be the first business day which in the opinion of Nasdaq Regulation shall be practical having regard to the circumstances pertaining.

**11150. Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”**

**(a) Normal Ex-Interest Dates**

All transactions, except “cash” transactions, in bonds or similar evidences of indebtedness which are traded “flat” shall be “ex-interest” as prescribed by the following provisions:

(1) On the second business day preceding the record date if the record date falls on a business day.

(2) On the third business day preceding the record date if the record date falls on a day other than a business day.

(3) On the third business day preceding the date on which an interest payment is to be made if no record date has been fixed.

**(b) Late Information Re: Ex-Interest Dates**

If notice of payment of interest is not made public sufficiently in advance of the record date or the payment date, as the case may be, to permit the security to be dealt in

“ex-interest” in accordance with paragraph (a) hereof such security shall be dealt in “ex-interest” on the first business day which, in the opinion of Nasdaq Regulation, shall be practical having regard to the circumstances pertaining.

#### **11160. “Ex” Liquidating Payments**

All transactions except “cash” transactions in stocks, bonds or similar evidences of indebtedness shall be “ex” liquidating payments or payments on account of principal in accordance with the formula set forth in Rules 11140 and 11150.

#### **11170. Transactions in “Part-Redeemed” Bonds**

In transactions in bonds which have been redeemed or paid in part, such bonds shall be designated as “part-redeemed” bonds. The settlement price of contracts in “part-redeemed” bonds shall be determined by multiplying the contract price by the original principal amount thereof and contracts shall be made on the same basis.

#### **11180. Reserved**

#### **11190. Reconfirmation and Pricing Service Participants**

(a) Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing transactions executed on Nasdaq, shall participate in fail reconfirmation and pricing services when offered.

(b) (1) A contract submitted to a reconfirmation and repricing service (“service”) which has been DK’d (“Don’t Know”) by the contra-party or is otherwise deemed a DK under the rules of the service may be closed-out by the party who submitted the contract to the service without notice during normal trading hours promptly after the completion of the reconfirmation and pricing cycle of the service for the account and liability of the non-confirming member.

(2) Notice of any execution pursuant to this paragraph (b), shall be made as promptly as possible on the day of execution, as provided in Rules 11810(g) and 11820(b).

#### **11200. COMPARISONS OR CONFIRMATIONS AND “DON’T KNOW NOTICES”**

##### **11210. Sent by Each Party**

###### **(a) Comparisons or Confirmations**

(1) Each party to a transaction, other than a cash transaction, shall send a Uniform Comparison or Confirmation of same on or before the first business day following the date of the transaction.

(2) Comparisons or confirmations of cash transactions shall be exchanged on the day of the trade.

(3) Comparisons or confirmations shall be compared upon receipt to ascertain whether any discrepancies exist. If discrepancies do exist, a corrected Uniform Comparison or Confirmation shall be sent by the party in error.

(4) This Rule shall not be applicable to transactions which clear through the National Securities Clearing Corporation or other clearing organizations registered under the Act.

**(b) Uniform Comparison or Confirmation**

A properly executed Uniform Comparison or Confirmation must be used for each transaction.<sup>1</sup>

**(c) “DK” Procedures Using “Don’t Know Notices” (NASD Form No. 101)**

When a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of four business days following the trade date of the transaction, the following procedure may be utilized.

(1) The confirming member shall send by certified mail, return receipt requested, or messenger, a “Don’t Know Notice” on the form prescribed by NASD Rule 11210 to the contra-member in accordance with the directions contained thereon. If the notice is sent by certified mail the returned, signed receipt therefor must be retained by the confirming member and attached to the fourth copy of the “Don’t Know Notice.” If delivered by messenger, the fourth copy must immediately be dated and manually receipted by, and imprinted with the firm stamp of, the contra-member pursuant to the provisions of paragraph (c)(4) of this Rule, returned to the messenger and thereafter be retained by the confirming member.

(2) (A) After receipt of the “Don’t Know Notice” as specified in paragraph (c)(1) of this Rule, the contra-member shall have four business days after the notice is received to either confirm or DK the transaction in accordance with the provisions of subparagraphs (B) or (C) below.

(B) If the contra-member desires to respond by mail, the second copy of the “Don’t Know Notice” previously received shall be executed in accordance with the provisions of paragraph (c)(4) of this Rule and sent to the confirming broker by certified mail, return receipt requested. The notice so returned shall indicate clearly whether the contra-member

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<sup>1</sup> Specifications for use of the Uniform Comparison are contained in the Final Report of the Banking and Securities Industry Committee entitled “Four Uniform Forms,” dated December 22, 1971.

desires to confirm or DK the transaction. The returned, signed receipt must thereafter be retained by the contra-member.

(C) If the contra-member desires to respond by messenger, it shall return to the confirming member the second and third copies of the notice which shall indicate clearly whether the contra-member desires to confirm or DK the transaction. The third copy shall be dated and manually receipted by the confirming broker pursuant to the provisions of paragraph (c)(4) of this Rule and immediately be returned to the messenger and thereafter be retained by the contra-member.

(3) If the confirming member does not receive a response from the contra-member by the close of four business days after receipt by the confirming member of the fourth copy of the "Don't Know Notice" if delivered by messenger, or the post office receipt if delivered by mail, as specified in paragraph (c)(1) of this Rule, such shall constitute a DK and the confirming member shall have no further liability for the trade.

(4) All "Don't Know Notices" sent by any party pursuant to the provisions of this paragraph (c) must be manually signed by a person authorized to pursue further discussions in respect to the transaction on behalf of the signing member. In addition to the manual signature receipt on the third and fourth copies, as required by paragraphs (c)(1) and (c)(2)(C) hereof, if delivered by hand, the firm stamp of the contra-member must be imprinted thereon to signify receipt.

(5) The "Don't Know Notice" form to be used for purposes of complying with this section, may be ordered through any office of NASD. If the official form is not used, the form which is used must conform in every respect to the official form.

**(d) "DK" Procedure Using Other Forms of Notice**

When a party to a transaction sends comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of four business days following the date of the transaction, the following procedure may be utilized in place of that provided in the preceding paragraph (c).

(1) The confirming member shall provide notice to the contra-member identifying the trade in question by providing the information described in Rule 11220. The notice shall, in addition, contain a request for the contra-member to confirm or "DK" the trade and the name of the individual issuing the notice.

(2) The confirming member shall record and retain verification of delivery to the contra-member of each notice issued in accordance with paragraph (d)(1) of this Rule.

(3) The contra-member, on receipt of the notice from the confirming member, shall research the trade in question.

(4) The contra-member shall then send notice to the confirming member to either confirm or “DK” the trade and shall include the name of the individual issuing the notice.

(5) If the confirming member does not receive a response in the form of a notice from the contra-member by the close of four business days after receipt of the confirming member’s notice, such shall constitute a DK and the confirming member shall have no further liability.

(6) Both the confirming member and the contra-member shall record and retain verification of the delivery and receipt of each notice issued pursuant to paragraph (d)(4) of this Rule.

(7) If the trade in question is confirmed by the contra-member pursuant to paragraph (d)(4) of this Rule, settlement shall be completed in the normal manner.

(8) Notices under this paragraph (d) may be delivered through any communications medium which provides verification of delivery and receipt as required under paragraphs (d)(2) and (d)(6).

**IM-11210. Uniform Comparison Form**

NO. COMPARISON			Firm Name			TELEPHONE		
			CODES					
ORIGINATOR NO.		TRANS. NO	TR	CAP	SETT	TRADE DATE	SETTLEMENT DATE	
IDENTIFICATION NO.			CONTRA PARTY		C.H. NUMBER		SPECIAL DELIVERY INSTRUCTIONS	
WE		QUANTITY		CUSIP NUMBER		SECURITY DESCRIPTION		NET AMOUNT
PRICE								
RESERVED FOR USER'S MONEY DETAIL								

**11220. Description of Securities**

Confirmations or comparisons shall include, in addition to an adequate

description of the security (which shall include payment options on a unit investment trust series), the price at which the transaction was made and any other information deemed necessary to insure that the buyer and seller agree as to details of the transaction. Such “other information” should include, if applicable, but need not be limited to, such phrases as “ex-warrants,” “ex-stock,” “registered,” “flat,” “part-redeemed,” “Canadian funds,” “with proxy,” etc.

## **11300. DELIVERY OF SECURITIES**

### **11310. Book-Entry Settlement**

(a) A member shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another member or a member of a national securities exchange or a registered securities association.

(b) A member shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(c) For purposes of this Rule, the term “securities depository” shall mean a securities depository registered as a clearing agency under Section 17A of the Act.

(d) (1) The term “depository eligible securities” shall mean securities that (A) are part of an issue of securities that is eligible for deposit at a securities depository and (B) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

(2) A determination under Rule 4310(c)(23) or under the corresponding rule of a national securities exchange that a security depository has included a CUSIP number identifying a security in its file of eligible issues does not render the security “depository eligible” under this Rule until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on Nasdaq; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on 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.

(e) This Rule shall not apply to transactions settled outside of the United States.

(f) The requirements of this Rule shall supersede any inconsistent requirements under other Rules in the Code.

(g) This Rule shall not apply to any transactions where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and:

(1) if the transaction is for same-day settlement, the deliverer is unable to deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities, or

(2) the deliverer is unable to deposit the securities in a depository prior to the cut-off date established by the depository for that issue of securities.

### **11320. Dates of Delivery**

#### **(a) For “Cash”**

In connection with a transaction for “cash,” delivery shall be made at the office of the purchaser on the day of the transaction.

#### **(b) “Regular Way”**

In connection with a transaction “regular way,” delivery shall be made at the office of the purchaser on, but not before, the third business day following the date of the transaction.

#### **(c) “Seller’s Option”**

In connection with a transaction “seller’s option,” delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the third business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

#### **(d) “Buyer’s Option”**

In connection with a transaction “buyer’s option,” delivery shall be made at the office of the purchaser on the date on which the option expires.

#### **(e) Contracts Due on Holidays or Saturdays**

Contracts due on a day other than a business day shall mature on the next business day.

**(f) “Delayed-Delivery”**

In connection with a transaction made for “delayed-delivery,” delivery shall be at the office of the purchaser on the date agreed upon at the time for the transaction.

**(g) Prior to Delivery Date**

If in contracts executed pursuant to paragraphs (b), (d) and (h) of this Rule, the seller tenders delivery before the stated time, acceptance shall be at the election of the purchaser, and rejection of such delivery by the purchaser shall be without prejudice to his rights.

**(h) Time and Place of Delivery**

Delivery shall be made at the office of the purchaser between the hours established by rule or practice in the community where such office is located. If the purchaser maintains more than one office, delivery shall be made at the office with which the transaction was effected, unless delivery instructions are provided at the time of the transaction.

**11330. Payment**

The party making delivery shall have the right to require the purchase money to be paid upon delivery by certified check, cashier’s check, bank draft or cash.

**11340. Stamp Taxes**

(a) Members shall, as required by the rules and regulations of jurisdictions imposing taxes on sales, purchases or other transfers of securities, furnish tax stamps or pay the tax through securities clearing organizations.

(b) In the event that taxes are due pursuant to state stock transfer taxes, the seller shall furnish to the buyer at the time of delivery a sale memorandum ticket to which shall be affixed and canceled sufficient state transfer stamps as are required by the state in which the sale occurs, or the tax may be paid by the seller through securities clearing organizations.

(c) Additional stamps. If any stamps in addition to those required by paragraph (a) hereof are desired by the buyer, the furnishing of such additional stamps by the seller may be made a part of the transaction.

(d) Seller’s failure to furnish stamps. If the buyer has requested the additional state stamps provided by paragraph (c) and at the time of delivery of the security the seller does not furnish or has not made adequate provision for such stamps, the buyer may furnish and cancel such additional state transfer stamps and deduct the cost thereof from the purchase price.

### 11350. Part Delivery

The purchaser shall be required to accept a part delivery on any contract due provided the portion remaining undelivered is not an amount which includes an odd-lot which was not a part of the original transaction.

### 11360. Units of Delivery

#### IM-11360. Uniform Delivery Ticket Form

NO. DELIVERY TICKET		Firm Name		TELEPHONE			
THE ATTACHED SECURITIES ARE DELIVERED AGAINST PAYMENT							
		CODES					
ORIGINATOR NO.		TRANS. NO		SETT	TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
560							
IDENTIFICATION NO.		ACCOUNT NAME		C.H. NUMBER		SPECIAL DELIVERY INSTRUCTIONS	
QUANTITY		CUSIP NUMBER		SECURITY DESCRIPTION		NET AMOUNT	

### 11361. Units of Delivery - Stocks

**(a) Stock certificates delivered in settlement of contracts:**

(1) in which the transaction is for 100 shares may be in one certificate for the exact number of shares or certificates totaling 100 shares.

(2) in which the transaction is greater than 100 shares and a multiple of 100 shall be in the exact amount of the contract, or in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof equaling the amount of the contract.

(3) in which the transaction is for more than 100 shares but not in a multiple of 100 shall be in multiples of 100 shares, or in amounts from which units of 100 shares can be made, or a combination thereof, plus either the exact amount for the odd lot or smaller amounts equaling the odd lot.

(4) in which the transaction is for less than 100 shares shall be in the exact amount of the contract or for smaller units aggregating the amount of the contract.

**(b) Uniform Delivery Ticket**

A properly executed Uniform Delivery Ticket must accompany the delivery of securities.<sup>2</sup>

**11362. Units of Delivery - Bonds**

**(a) Coupon Bonds**

Each delivery of bonds or similar evidences of indebtedness in coupon bearer form shall be made in denominations of \$1,000 or in denominations of \$100 or multiples thereof aggregating \$1,000.

**(b) Registered Bonds**

Each delivery of bonds or similar evidences of indebtedness in fully registered bond issues shall be made in denominations of \$1,000 or multiples thereof or in amounts of \$100 or multiples aggregating \$1,000 but in no event in denominations larger than \$100,000.

**(c) Bonds Issued in Both Coupon and Registered Form**

Unless other wise specified at the time of execution, contracts in bonds that are issuable in either coupon or registered form, shall be settled by delivery of bonds in either form pursuant to the denominations in paragraphs (a) and (b) above, notwithstanding that there may be a charge for interchanging one form with the other.

**(d) Units of Delivery by Agreement**

When a contract relating to paragraphs (a), (b) and (c) above is for a principal amount which is not a multiple of \$100, the parties shall agree, at the time of entering into the contract, as to the proper units of delivery.

**11363. Units of Delivery - Unit Investment Trust Securities**

The minimum unit of delivery for Unit Investment Trust Securities shall be a single unit of the trust.

**11364. Units of Delivery - Certificates of Deposit for Bonds**

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<sup>2</sup> Specifications for use of the Uniform Delivery Ticket are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

The units of delivery for certificates of deposit for bonds, shall be the same as prescribed for bonds in Rule 11362.

#### **IM-11364. Trading Securities As “Units” or Bonds “With Stock”**

Where securities are physically separate instruments, transferable independently of one another, and not subject to any legal or technical condition which requires that they be kept together, good practice requires that they be quoted and dealt in separately and not as units.

Where, for some special reason, members enter into a contract calling for a group of securities, they are cautioned to make adequate specification both at the time of trade and in their confirmation or comparison, so that uncertainty or misunderstanding in the settlement of the contract may be eliminated.

#### **11400. DELIVERY OF SECURITIES WITH DRAFT ATTACHED**

##### **11410. Acceptance of Draft**

###### **(a) Time of Presentation**

Drafts accompanying the shipment of securities need be accepted only on a business day between the hours established by rule or practice in the community where the draft is presented. Acceptance of a draft at other times shall be at the option of the drawee, and the drawee shall not be liable for any expense arising out of his refusal of the draft when presented on a Saturday or half-holiday.

**Note:** For his own protection, the seller should instruct his bank or collecting agent that if the draft is received on a Saturday or half-holiday, it need not be presented to the drawee until the following business day.

###### **(b) Prior to Settlement Date**

The acceptance of a draft prior to the settlement date shall be at the option of the drawee.

###### **(c) With Irregularities**

The acceptance of a draft which contains irregularities shall be at the option of the drawee.

###### **(d) Expense Due to Shipment**

Expenses of shipment, including insurance, postage, draft, and collection charges, shall be paid by the seller.

###### **(e) Expenses Due to Delay**

Failure to accept a draft in which no irregularities exist, when duly presented on a business day, shall make the drawee liable for the payment of interest to the date the draft is paid and for other incidental expenses incurred because of the delay, including protest fees, if any, and wire charges.

**(f) Claims for Irregularities**

Claims with respect to such items as price, interest, protest fees or wire charges and items of similar nature, arising from the acceptance of draft shipments in which irregularities exist, shall be presented not later than ten days after payment. This limitation shall not apply to matters covered hereinafter under "Reclamations," in Rules 11710 to 11730.

**11500. DELIVERY OF SECURITIES WITH RESTRICTIONS**

**11510. Delivery of Temporary Certificates**

A temporary certificate shall not be a good delivery when permanent certificates are available.

**11520. Delivery of Mutilated Securities**

(a) A mutilated security shall not be a good delivery until appropriately authenticated by the trustee, registrar, transfer agent, or issuer.

(b) The delivery of a bond which bears a coupon which has been mutilated as to the bond number or signature or which bears a coupon which has been canceled in error shall not be good delivery unless an appropriate endorsement by an official authorized by paragraph (c) hereof shall have been placed on the reverse of the coupon.

(c) The endorsement shall be signed on behalf of the obligor by an officer thereof or, under authorization from the obligor, on behalf of the corporate trustee or paying agent by a duly authorized officer thereof or other person authorized to sign on behalf thereof.

**11530. Delivery of Securities Called for Redemption or Which Are Deemed Worthless**

**(a) Securities Called for Redemption**

A certificate of stock or a bond shall cease to be a good delivery upon publication of notice of call for redemption, except when an entire issue is called for redemption and except against transactions in "called stock" or "called bonds" dealt in specifically as such.

**(b) Securities Deemed Worthless**

(1) In contracts for securities where a public announcement or publication

of general circulation discloses that the securities have been deemed worthless, deliveries shall consist of (A) the worthless securities or (B) a Letter of Indemnity which shall grant the purchaser any rights and privileges which might accrue to the holders of the physical securities.

(2) Deliveries effected pursuant to paragraph (b)(1) shall operate to close-out the contract and must be accompanied by documentation evidencing that the security was deemed worthless after the original execution date of the contracts. Such contracts shall be settled at the existing contract price.

(3) For purposes of this paragraph (b), securities deemed worthless shall be those instruments which have no known market value.

#### **11540. Delivery Under Government Regulations**

##### **(a) Documents Required**

When the laws, regulations, rulings, instructions or orders of any government, government instrumentality or agency, or official thereof having jurisdiction, require a license, clearance certificate, affidavit of ownership or any similar document in connection with the acquisition, disposition, transfer or redemption of, or other dealing in or with respect to, any security, such security shall not be a good delivery unless accompanied by the document or documents so required.

##### **(b) Certificate Subject to Stoppage**

If a specific certificate tendered in settlement of a contract in foreign securities is on a black list, blocked list, or subject to similar stoppage, from which an innocent holder in due course cannot have it removed by simple request, such certificate is not a good delivery, and reclamation may be made without limit of time.

#### **11550. Assignments and Powers of Substitution; Delivery of Registered Securities**

##### **(a) General Requirements**

Any registered security to be a good delivery must be accompanied by an assignment and a power of substitution (when such power of substitution is required under paragraph (g) of this Rule) conforming to the requirements set forth in Rule 11550 to 11574, inclusive. Any expense incurred through failure of a seller to meet these requirements shall be paid by the seller.

##### **(b) Assignment**

An assignment shall be executed on the certificate itself or on a separate paper, in which latter case there shall be a separate assignment for each certificate.

##### **(c) Signature Requirements**

The signature to an assignment or power of substitution shall be technically correct; i.e., it shall correspond with the name as written upon the certificate in every particular without alteration or enlargement, or any change whatever, except that “and” or “&” “Company” or “Co.” may be written either way.

**(d) Detached Assignment Requirements**

A separate (detached) assignment shall contain provision for the irrevocable appointment of an attorney, with power of substitution, and a full description of the security, including name of issuer, issue, certificate number, and amount (expressed in words and numerals).

**(e) Two or More Names**

A certificate registered in the names of two or more individuals or firms shall be a good delivery only if signed by all the registered owners.

**(f) Alteration or Correction**

Any alteration or correction in an assignment or power of substitution shall be accompanied by an explanation on the original instrument signed by the person or firm executing the same.

**(g) Power of Substitution**

When the name of an individual or firm has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

**(h) Guarantee**

Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar. It is not the intent of this paragraph that a “New York,” national securities exchange member or other specific guarantee is required; rather, it is the intent only that the guarantee be acceptable to the transfer agent.

**(i) Foreign Internal Securities**

Except for Canadian Securities, American Depositary Receipts, American Shares, New York Shares and similar securities, the provisions of paragraphs (b) through (g), inclusive, and Rule 11572 shall not apply to Foreign Internal Securities in registered form. In default of specific Rules in this Code, the usual conditions of delivery and transfer of Foreign Internal Securities in registered form in the foreign market where principally traded shall apply.



**(j) Uniform Transfer Instruction Form**

A properly executed Uniform Transfer Instruction Form must accompany securities presented for transfer.<sup>3</sup>

**IM-11550. Uniform Transfer Instructions Form**

TO TRANSFER AGENT:							
<div style="border: 1px solid black; width: 200px; height: 40px; margin: 0 auto;"></div>				Firm Name			
				I.D. #			
PLEASE TRANSFER THE ATTACHED SECURITIES AS SHOWN BELOW							
SECURITY DESCRIPTION				CERTIFICATION PRESENTED TO TRANSFER			
QUANTITY	DENOMINATIONS		TAX PAYER NO.	CUSIP NUMBER	CONTROL	PRESENTOR	DATE
TO BE REGISTERED IN THE NAME OF							

**11560. Certificate of Company Whose Transfer Books Are Closed**

**General Requirements**

A certificate of a company whose transfer books are closed indefinitely for any reason shall be good delivery only if the required ownership transfer indemnification is affixed to or recorded upon the certificate. The indemnification acknowledges the assignor(s)' ultimate responsibility for the ownership of the certificate as of the date of the indemnification and shall be affixed or recorded only once during the lifetime of the certificate. Certificates delivered pursuant to this Rule must conform with all the applicable delivery requirements set forth in Rule 11550 of this Code.

**IM-11560. Sample Ownership Transfer Indemnification Stamp**

Date:

The undersigned owner of this certificate (number) representing ..... Shares of .....hereby certifies the transfer of all ownership therewith to the bearer hereby. We acknowledge that the transfer books of the herein named corporation are closed and agree to accept

<sup>3</sup> Specifications for use of the Uniform Transfer Instruction Form are contained in the Final Report of the Banking and Securities Industry Committee entitled "Four Uniform Forms" dated December 22, 1971.

responsibility in accordance with the provisions of Rule 11560 of Nasdaq’s Uniform Practice Code.

\_\_\_\_\_

**NAME OF MEMBER**

\_\_\_\_\_

**AUTHORIZED SIGNATURE**

**11570. Certificates in Various Names**

**11571. Certificate in Name of Corporation**

**(a) Transfer Books Open**

A certificate in the name of a corporation or an institution, or in a name with official designation shall be a good delivery only if the statement “Proper papers for transfer filed by assignor” is placed on the assignment and signed by the transfer agent.

**(b) Transfer Books Closed**

Where a certificate, an assignment or a power of attorney is in the name of a corporation and the transfer books of the issuing company are closed indefinitely for any reason, the certificate shall be a good delivery if the assignment or other instrument effecting transfer on the corporation’s behalf is executed by an officer of such corporation, other than the secretary, and is accompanied by (1) a guarantee of such officer’s signature executed by a person with the authority to make such a guarantee; (2) a copy of a corporate resolution and a completed and executed certificate of incumbency; and (3) the ownership transfer indemnification, as provided in Rule 11560, affixed to or recorded on the certificate.

**(c) Foreign Internal Securities**

The foregoing requirements shall not apply to foreign internal securities when the requirements do not correspond to the laws or customs of the country concerned; but instead such laws and customs shall govern such securities.

**IM-11571. Sample Certificate and Authorizing Resolution/Certificate of Incumbency**

I hereby certify that a meeting of the Board of Directors of ....., a corporation organized under the laws of the State of ....., held the ..... day of ....., 19....., at which a quorum was present and acting throughout, the following resolution was duly adopted and is now in full force and effect:

**RESOLVED**, that any one of the following officers of this Corporation, viz: the President, Vice President, Treasurer or Secretary, be and is hereby fully authorized and

empowered to sell, assign, transfer and deliver any and all shares of stock, bonds, debentures, notes, evidences of indebtedness, or other securities now or hereafter standing in the name of or owned by this Corporation, and to make, execute, and deliver, any and all written instruments necessary or proper to effectuate the authority hereby conferred.

I further certify that the authority thereby conferred is not inconsistent with the Charter or By-Laws of this Corporation, and that the following is a true and correct list of the officers of this Corporation authorized to act.

Signing Officers:

In witness, whereof, I have hereunto set my hand and the seal of said Corporation this .....day of ....., 19.....

(Affix Corporate Seal)

\_\_\_\_\_

Secretary

(The foregoing certification and the assignment of the securities should be executed by different officers.)

**11572. Certificate in Name of Firm**

Unless the endorsement specifies otherwise, there shall be a presumption that stock registered in a firm or business name is registered in the name of a partnership and not a corporation.

**11573. Certificate in Name of Dissolved Firm Succeeded by New Firm**

A certificate with an assignment or a power of substitution executed in the name of a firm that has since dissolved and is succeeded by a firm or firms having as general partners one or more of the general partners of the dissolved firm shall be a good delivery only if the new firm or one of the new firms shall have signed the statement "Execution Guaranteed" under a date subsequent to the formation of the new firm so signing.

**11574. Certificate in Name of Deceased Person, Trustee, etc.**

(a) A certificate shall not be a good delivery with an assignment or power of substitution executed by a: (1) person since deceased; (2) trustee or trustees, except as provided in paragraph (b) below, or except for trustees acting in the capacity of a board of directors of a corporation or association, in which case Rule 11561(a) shall apply; (3) guardian, except as provided in paragraph (b) below; (4) infant; (5) executor, except as provided in paragraph (b) below; (6) administrator, except as provided in paragraph (b)

below; (7) receiver in bankruptcy; (8) agent; (9) attorney; (10) or with a qualification, restriction or special designation.

(b) A certificate shall be a good delivery with an assignment or a power of substitution executed by a: (1) domestic individual executor(s) or administrator(s); (2) domestic individual trustee(s) under an inter vivos or testamentary trust; or (3) domestic guardian(s) including committees, conservators and curators. These exceptions to paragraph (a) above are to cover transfers that will be effected by transfer agents without additional documentation. This paragraph (b) shall apply only to securities of a domestic issuer (organized under the laws of any state in the United States or District of Columbia) which are registered in the name(s) of (1), (2) or (3) of this paragraph (b). Certificates delivered pursuant to this paragraph (b) must be properly assigned, and the signature(s) to the assignment be guaranteed pursuant to Rule 11550(h).

(c) This Rule does not apply to certificates registered under a Statutory Gifts to Minors Act.

**IM-11574. Sample Limited Partnership Change of Trustee Form**

Limited Partnership Change of Trustee Form

FBO (Investor's Name)	Partnership Name
Assignor (Present Trustee's Name)	Assignor's Address
Customer's A/C Number with Assignor	This hereby constitutes and appoints the said Partnership to transfer the said interests on the books of the Partnership with full power of substitution in the premises.
The Assignor hereby assigns to the Assignee 100% of the Assignor's right, title and interest in the Limited Partnership(s) described herein.	
ASSIGNOR'S RELEASE: Authorized Signature X	(DATE)
Designee (New Trustee's Name)	(Assignee's Address)
(Customer's A/C Number with Assignee)	(Assignee's Tax ID Number)
New Trustee's (Assignee's) Instructions:	
Partnership Information:	
ASSIGNEE'S ACCEPTANCE Authorized Signature X	(DATE)

**Assignee:** Upon receipt, forward this form and the original certificate (if available) to the General Partner for re-registration.

**General Partner:**

## **11600. DELIVERY OF BONDS AND OTHER EVIDENCES OF INDEBTEDNESS**

### **11610. Liability for Expenses**

Failure of the seller to meet the requirements of good delivery relating to bonds and similar evidences of indebtedness, as set forth in paragraphs (a) through (h) of this Rule inclusive, shall make the seller liable for any expense incurred as a result of such failure.

#### **(a) Coupon Bonds**

A coupon bond shall have securely attached in the correct place proper coupons, warrants, etc., of the same serial number as the bond. Acceptance of cash or check in lieu of missing coupons shall be at the option of the purchaser.

#### **(b) Endorsed Bonds**

A coupon bond bearing an endorsement of a definite name of a person, firm, corporation, association, etc., in conjunction with words of condition, qualification, direction, or restriction, not properly pertaining thereto as a security, shall not be a good delivery unless sold specifically as an "endorsed bond." This shall also apply to bonds with coupons bearing such endorsements.

#### **(c) Interest in Default**

A bond upon which interest is in default shall carry all unpaid coupons.

#### **(d) Registerable as to Principal**

A coupon bond registerable as to principal shall be a good delivery only if registered to bearer.

#### **(e) Endorsements for Banking or Insurance Requirements**

A coupon bond bearing an endorsement indicating that the bond was deposited in accordance with a governmental requirement pertaining to banking institutions or insurance companies shall not be a good delivery. If released, with such release acknowledged before an officer authorized to take acknowledgments, it shall be a good delivery if sold specifically as a "released endorsed bond."

#### **(f) Coupon Detached Prior to Delivery**

(1) A bond dealt in "and interest," for delivery on or after the date on which interest is due and payable, shall be delivered without the coupon payable

on such date.

(2) Late delivery. In the settlement of contracts in bonds dealt in “and interest” where delivery is due prior to the interest payment date but is made on or after the interest payment date, bonds may be delivered without coupons payable on such date, and the seller may present such detached, unpaid coupons to the buyer for payment, the buyer bearing the risk of non-payment.

**(g) Stamped Bonds**

(1) If a plan of reorganization which has been declared operative, or an amendment or supplement to an indenture provides that the bonds covered thereby shall be stamped to reflect the adoption of such plan or the amendment or supplement to the indenture, bonds so stamped shall be a good delivery and bonds not so stamped shall not be a good delivery.

(2) The fact that a bond has been stamped “Tax Paid” by any authority vested with the power to tax, if the stamp does not indicate ownership, shall not prevent such bond from being a good delivery.

**(h) Certificates of Deposit**

Certificates of deposit issued by committees or depositaries other than those specified at time of trade shall not be a good delivery.

**11620. Computation of Interest**

**(a) Interest To Be Added to the Dollar Price**

In the settlement of contracts in interest-paying securities other than for “cash,” there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the third business day following the date of the transaction. In transactions for “cash,” interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

**(b) Basis of Interest**

Interest shall be computed on the basis of a 360-day year, i.e., every calendar month shall be considered to be 1/12 of 360 days; every period from a date in one month to the same date in the following month shall be considered to be 30 days.

*Note: The number of elapsed days should be computed in accordance with the examples given in the following table:*

*From 1st to 30th of the same month to be figured as 29 days;  
From 1st to 31st of the same month to be figured as 30 days;  
From 1st to 1st of the following month to be figured as 30 days;*

*From 1st to 28th of February to be figured as 27 days;  
From the 23rd of February to the 3rd of March is to be figured as 10 days;  
From the 15th of May to the 6th of June is to be figured as 21 days.*

*Where interest is payable on 30th or 31st of the month:*

*From 30th or 31st to 1st of the following month to be figured as 1 day;  
From 30th or 31st to 30th of the following month to be figured as 30 days;  
From 30th or 31st to 31st of the following month to be figured as 30 days;  
From 30th or 31st to 1st of second following month to be figured as 1 month, 1 day.*

**(c) Securities Traded “and interest”**

When delivery of a security traded “and interest” is made between the record date fixed for the purpose of determining the holder entitled to receive interest and the interest payment date, a deduction equivalent to the full amount of the interest to be paid shall be made on settlement.

**(d) Securities Traded “flat”**

When delivery of a security traded “flat” is made after the record date fixed for the purpose of determining the holder entitled to receive interest, in the settlement of a contract made prior to the date on which the security was traded “ex-interest,” a due-bill check for the full amount of the interest to be paid shall accompany the delivery.

**(e) Income Bonds**

Income bonds shall be dealt in “flat” even though such bonds are paying interest, except that where a certain fixed rate is guaranteed in the indenture and provision is made for additional contingent payment, they shall be dealt in “and interest” at the fixed rate guaranteed in the indenture (so long as interest payments at such fixed rate are not in default and no announcement of intention to default has been made).

**(f) Fractions of a Cent**

In all transactions involving the payment of interest, fractions of a cent equaling or exceeding five mills shall be regarded as one cent; fractions of a cent less than five mills shall be disregarded.

**11630. Due-Bills and Due-Bill Checks**

**(a) Definition of Due-Bills**

The term “due-bill” as used in this Rule means an instrument employed for the purpose of evidencing the transfer of title to any security or rights pertaining to any security contracted for or evidencing the obligation of a seller to deliver such to a subsequent purchaser. A due-bill shall not be transferable or assignable by the purchaser.

**(b) Definition of Due-Bill Checks**

The term “due-bill checks” as used in this Rule means a due-bill in the form of a check payable on the date of payment of a cash dividend, interest on registered bonds or interest on unit investment trust securities, which prior to such date shall be considered as a due-bill, as defined in paragraph (a) above, for the amount of such dividend or interest.

**(c) Due-bills for Stock Dividends and Rights**

A security sold before it trades “ex-dividend” (for stock and scrip dividends) or “ex- rights” and delivered too late for transfer on or before the record date, shall be accompanied by a due-bill for the distribution to be made. When a due-bill accompanying a delivery evidences the obligation of the seller to deliver stock, the purchaser shall prorate the value of the contract, and shall make payment of the balance upon redemption of the due-bill. The requirement to pro-rate the value of the contract as described above shall not apply to stock dividends less than ten percent (10%) or to “spinoffs” or rights.

**(d) Due-bill Checks for Cash Distribution and Interest**

Due-bill checks for a cash distribution, interest on registered bonds or interest on unit investment trust securities shall accompany securities delivered too late for transfer on or before the record date.

**(e) Redemption of Due-Bills**

Due-bills for any security or rights pertaining to any security shall be redeemable on the date on which the security or rights are issued by the corporation or as soon thereafter as the signer or guarantor of the due-bill can obtain transfer of the security or rights into denominations necessary to effect the redemption of the due-bills.

**(f) Default Upon Redemption of Due-Bills**

A due-bill for any security or rights pertaining to any security issued pursuant to paragraph (c) of this Rule and presented for redemption pursuant to the terms of paragraph (e), and not honored by the seller may, at the option of the buyer, be treated as a “fail to receive” from the seller, and the distribution evidenced by such due-bill may be bought-in for the account and risk of the seller pursuant to the terms of Rule 11810. However, buy-ins executed in accordance with this paragraph must be executed after the payable date of such securities as determined by the issuing corporation.

**IM-11630. Sample Due-Bill Forms**

**(a) Due-Bill for Stock Dividend or Stock Distribution**

For value received, the undersigned hereby assigns, transfers and sets over to.....the stock distribution of.....( ) shares of.....stock



of.....to be issued on.....to the registered holder of.....( ) shares of.....stock of.....represented by certificate number....., to which the undersigned is entitled as a stock dividend, and hereby irrevocably constitutes and appoints.....attorney to transfer the shares representing said stock dividend on the books of said corporation, with full power of substitution in the premises.

Dated.....

.....

(Official Signature)

\_\_\_\_\_

**(b) Due-Bill for Rights**

For value received, the undersigned hereby assigns, transfers, and sets over to.....the warrant and/or fractional warrant to which the undersigned is entitled, evidencing the rights to subscribe for....., which warrant and/or fractional warrant is to be issued to the holder of record at the close of business.....of.....( ) shares of.....stock of.....represented by certificate No.....

Dated.....

.....

(Official Signature)

\_\_\_\_\_

**(c) Due-Bill for Interest on When Issued Contract**

This is to certify that, upon issuance of.....in accordance with the plan approved by....., the undersigned will pay to.....\$ representing (contingent)(income) interest for.....on \$ principal amount of said bonds sold to him when, as, and if issued on.....19....

This due-bill shall become null and void if the contract for sale of said bonds cannot be completed in accordance with the plan approved by....., on.....

Dated.....

.....

(Official Signature)

\_\_\_\_\_

**(d) Due-Bill for Dividend on When Issued Contract**

This is to certify that, upon issuance of.....in accordance with the plan approved by ....., the undersigned will pay to.....\$ , representing the dividend of \$.....per share declared for the period ending.....19...., on.....shares of.....stock of.....sold to him when, as, and if issued on.....19.....

This due-bill shall become null and void if the contract for sale of said stock cannot be completed in accordance with the plan approved by....., on.....

Dated.....

.....

(Official Signature)

\_\_\_\_\_

**(e) Due-Bill Check**

Consider this check as due-bill until payable date as shown below

NEW YORK....., 19...No. 1999

XYZ BANK

Pay To The Order Of ..... \$.....

.....DOLLARS

In Payment of Dividend or Interest

Dividend Account

Interest Account

On.....

NOT PAYABLE BEFORE.....

Record Date.....

## **11640. Claims for Dividends, Rights, Interest, etc.**

### **(a) Dividends or Rights**

A buyer of stock who has the certificate in his possession in time to enable him to effect transfer prior to the closing of the books or to the record date shall have no claim upon the seller (unless the seller is the registered holder) for the dividend or rights pertaining to such certificate, but the seller, upon request of the buyer, shall use his best efforts to collect the same for the buyer.

### **(b) Substantiating Claims**

When a buyer of stock who has failed to have said stock transferred in time requests the seller to collect the dividends or rights pertaining thereto, the seller may require from the buyer the presentation of the certificate or a letter from the transfer agent substantiating the claim, or the buyer's written statement that he or his customer was the holder on the record date, and a guarantee of indemnity for liability arising out of any further demand for said dividend or rights.

### **(c) Interest or Rights**

The provisions of paragraphs (a) and (b) of this Rule shall be equally applicable to interest or rights pertaining to registered bonds and unit investment trust securities.

## **11650. Transfer Fees**

The party at whose instance a transfer of securities is made shall pay all service charges of the transfer agent.

## **11700. RECLAMATIONS AND REJECTIONS**

### **11710. General Provisions**

#### **(a) Definition**

The term "reclamation" as used in this Code shall mean a claim for the right to return or the right to demand the return of a security which has been previously accepted. Securities which have been presented for delivery on a transaction and which for a valid reason have been refused shall within the meaning of Rules 11710 and 11720, inclusive, be deemed a rejection for the purposes of these Rules.

#### **(b) Uniform Reclamation Form**

##### **(1) Form Must Accompany Securities**

A properly executed Uniform Reclamation Form must accompany

securities on reclamation or return.<sup>4</sup>

(2) Absence of Form Permits Sell-Out

Any security reclaimed or returned on a transaction without a properly executed Uniform Reclamation Form as prescribed within this Rule may, at the option of the receiving broker, be “sold-out” pursuant to Rule 11820 of this Code, however, in no event later than three business days after receipt of the receiving broker or his agent.

**(c) Time for Delivery of Reclamation and Manner of Settlement**

(1) A security with an irregularity having been delivered may be returned or reclaimed between the hours established by rule or practice in the community where the delivery or reclamation is to be made.

(2) When a security is returned or reclaimed, the party who originally delivered it shall immediately give the party returning it either the security in proper form for delivery in exchange for the security originally delivered, or the money amount of the contract. In the latter case, unless otherwise agreed, the party to whom the security is returned shall be deemed to be failing to deliver the security until such time as a proper delivery is made.

**(d) Minor Irregularities**

Reclamation for an irregularity which affects only the currency of the security in the market shall be made within fifteen days from the day of original delivery, except that, if the security is issued under the jurisdiction of a foreign country, the period for reclamation under this section shall be forty-five days from the day of original delivery.

**(e) Wrong Form of Certificate**

Reclamation, by reason of the fact that a form of certificate was delivered which was not a good delivery, but which is exchangeable without charge for a certificate which is a good delivery, shall be made within fifteen days from the day of original delivery.

**IM-11710. Uniform Reclamation Form**

To Accompany Reclamations Subject to Rules & Regulations of:	NSCC NASD - Uniform Practice Code Nasdaq – Uniform Practice Code
---	--

<sup>4</sup> Specifications for use of the Uniform Reclamation Form are contained in the Final Report of the Banking and Securities Industry Committee entitled “Four Uniform Forms” dated December 22, 1971.

RECLAIMED TO	Rec No.	Name of Receiver	Date Securities Below Received
RECLAIMED BY	Del. No.	Name of Deliverer	Date of Return
Quantity	Security Description (certificate's can be applied to reverse side of copy #1)		Amount
<input type="checkbox"/>	Wrong Security _____ Should Be		<input type="checkbox"/>
			Wrong Money _____ Our Money
<input type="checkbox"/>	Carries Due Bill		<input type="checkbox"/>
			Duplicates Delivery _____ You Delivered On
<input type="checkbox"/>	Needs Signature Guarantee		<input type="checkbox"/>
			Wrong Settlement Date _____ Our S/D
<input type="checkbox"/>	Needs Tax Stamp		<input type="checkbox"/>
			No Instructions
<input type="checkbox"/>	Release Power of Attorney		<input type="checkbox"/>
			Needs Legal Opinion
<input type="checkbox"/>	Coupon Missing		<input type="checkbox"/>
			Needs Better Account Date
<input type="checkbox"/>	Other - Explanation		
_____	_____	_____	
Name of Person making Reclamation (Print)	Telephone Number	Extension	

ATTACH COPIES 1 & 2 TO CERTIFICATE - COPIES 3 & 4 ARE RETAINED BY DELIVERER		

**11720. Irregular Delivery - Transfer Refused - Lost or Stolen Securities**

**(a) Irregular Delivery**

Reclamation, by reason of the fact of an irregularity in the delivery of a security, shall be within 30 months after the settlement date of the contract. For purposes of this paragraph, the term “irregular delivery” shall include, among other things, wrong, duplicate, misdirected or over-deliveries and delivery of unit investment trust securities having the incorrect payment option.

**(b) Transfer Refused**

Reclamation, by reason of the fact that a specific certificate tendered in settlement of a contract has been presented for transfer and transfer thereof has been refused by the transfer agent, shall be within 30 months after the settlement date of the contract.

**(c) Lost or Stolen or Confiscated Securities**

Reclamation, by reason of the fact that a security is lost or stolen or confiscated shall be within 30 months after the settlement date of the contract.

**(d) Running of 30 Month Period**

The running of the 30-month period described in this Rule shall not be deemed to foreclose a member’s rights to pursue its claim via other open avenues, including but not limited to arbitration.

**IM-11720. Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled**

Any member who discovers securities in its possession to which it is not entitled is required to make reasonable attempts to ascertain and to promptly notify the true owner of such securities and to take affirmative steps to correct the situation. Failure to abide by this requirement may result in a violation of Rule 2110.

**11730. Called Securities**

Reclamation by reason of the fact that a security was delivered after publication of notice of call for its redemption, may be made without limit of time and such security may be returned to the party who held it at the time of such publication; except that this Rule shall not apply when an entire issue is called for redemption or when the security involved was dealt in specifically as a “called” security.

## **11740. Marking to the Market**

### **(a) Demand for Deposit**

The party who is partially unsecured by reason of a change in the market value of the subject of a contract in securities may demand from the other party a deposit equal to the difference between the contract price and the market price, without being required to make a mutual deposit. Such deposit shall be made either with the member demanding same or with a mutually agreed-on depository or, on failure to agree on a depository, with any member of the Federal Reserve System with an office in the financial district of the city where the unsecured party maintains its office.

### **(b) Assignment of Contract**

Either party to a contract in securities may assign the contract, either at the time the transaction is effected or at the time a request is made for funds to “mark to the market,” provided the other party to the contract assents to the assignment.

### **(c) Refund of Deposit**

If the market value of the subject of the contract changes so as to permit a total or partial refund of any deposits which have been made in accordance with paragraph (a) of this Rule, such refunds shall be made on demand.

### **(d) Delivery of Demand for Deposit or Refund**

All demands for deposits or refunds shall be in writing and shall be delivered at the office of the party upon whom the demand is made during the business hours of member banks of the Federal Reserve System located in the community where such party maintains his office, and such demands shall be complied with immediately.

### **(e) Failure to Comply with Demand**

Failure of a party to comply with a demand for a deposit or refund made in accordance with paragraphs (a), (c) and (d) of this Rule shall entitle the party making the demand to close the contract without notice, by making offsetting purchase or sale contracts in the best available market for the account and liability of the party failing to comply with said demand.

### **(f) Contract Closure**

No contract shall be closed pursuant to paragraph (e) of this Rule prior to the expiration of regular delivery time in the community where the party making the demand maintains his office, on the next business day following the day when notice of such demand was received by the other party.

**(g) Notice of Offsetting Purchase or Sale**

The party making such offsetting purchase or sale contracts shall as promptly as possible on the day on which they are made (1) notify the other party via telegram, TWX, or other comparable written media, and (2) mail or deliver formal confirmation of same to the other party and a copy of said confirmation to Nasdaq Regulation.

**11800. CLOSE-OUT PROCEDURES**

**11810. Buying-In**

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

**(a) Notice of “Buy-In”**

(1) Written notice of “buy-in” shall be delivered to the seller at his office not later than 12:00 noon, his time, two business days preceding the execution of the proposed “buy-in.”

(2) For purposes of this Rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

**(b) Information Contained in “Buy-in” Notice**

(1) Every notice of “buy-in” shall state the date of the contract to be closed, the quantity and contract price of the securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 a.m. local time in the community where the buyer maintains his office, the security may be “bought-in” on the date specified for the account of the seller. If the originator of a “buy-in” in a depository eligible security is a participant in a registered securities depository, the specified delivery time may not be prior to 3:00 p.m. Eastern Time and the “buy-in” may not be executed prior to 3:00 p.m., Eastern Time. Each “buy-in” notice shall also state the name and telephone number of the individual authorized to pursue further discussions concerning the buy-in.

(2) Notice may be redelivered immediately to another broker/dealer from whom the securities involved are due in the form of a re-transmitted notice (re-transmit). A re-transmitted notice of buy-in must be delivered to subsequent broker/dealers not later than 12 noon, recipient’s local time, on the business day preceding the time and date of execution of the proposed buy-in, and the time



specified for delivery may not be prior to the time specified in the original notice.

**IM-11810. Sample Buy-In Forms**

*(a) Notice of Buy-In*

.....

(Member's Name)

.....

(Locality and Date)

TO.....

RE: .....

(Quantity and description of Security)

which is due from you to the undersigned on a contract made on.....at.....for settlement

(Date of Contract) (Contract Price)

.....

(Settlement Date)

\*\*\*

We hereby notify you that unless you make delivery of the foregoing security at or before..... (Time and Date) the security will be bought in for your account and risk pursuant to Rule 11810 in the Uniform Practice Code.

**Note:** If some or all of the foregoing securities are due you by another member of Nasdaq Rule 11810(b) permits the use of the re-transmitted buy- in.

Buy-In Dept.

By:

Phone:

(b) Notice of Re-transmitted Buy-In

.....

(Member's Name)

.....  
(Locality and Date)

TO .....  
RE: .....

(Quantity and Description of Security)

which is due from you to the undersigned on a contract made on ..... at .....  
settlement on

(Date of Contract) (Contract Price)

.....  
(Settlement Date)

\* \* \*

We hereby inform you that a notice of buy-in has been issued with respect to the aforesaid securities and stated that unless delivery was made at or before .....(Time and date on original buy-in) the securities may be bought in pursuant to Rule 11810 in the Uniform Practice Code.

**Note:** If some or all of the foregoing securities are due you by another member of Nasdaq Rule 11810(b) also permits you to use the re-transmitted buy-in.

Buy-In Dept.  
By:  
Phone:

**(c) Seller's Failure to Deliver After Receipt of Notice**

(1) (A) On failure of the seller to effect delivery in accordance with the "buy-in" notice, or to obtain a stay as hereinafter provided, the buyer may close the contract by purchasing all or part of the securities necessary to satisfy the amount requested in the "buy-in" notice. Securities delivered subsequent to the receipt of the "buy-in" notice should be considered as delivered pursuant to the "buy-in" notice. Delivery of the requisite number of shares, as stated in the "buy-in" notice, or execution will also operate to close-out all contracts covered under re-transmitted notices of buy-ins issued pursuant to the original notice of buy-in. A "buy-in" may be executed by a member from its long position and/or from customers' accounts maintained with such member.

(B) For transactions in Nasdaq securities where the buyer is a

customer (other than another member), upon failure of a clearing corporation to effect delivery in accordance with a buy-in notice, the contract must be closed by purchasing for “cash” in the best available market, or at the option of the buyer for guaranteed delivery, for the account and liability of the party in default all or any part of the securities necessary to complete the contract.

(C) As provided in paragraph (c)(1)(A) and (B) hereof, members must be prepared to defend the price at which the “buy-in” is executed relative to the current market at the time of the “buy-in.”

(2) Buy-in for unit investment trust securities. Buy-in execution options, in addition to those contained in paragraph (c)(1), may be available when the purchaser wishes to buy-in contracts made for unit investment trust securities. The purchaser may:

(A) by mutual agreement, accept from the seller in lieu of the seller’s obligation under the original contract (which shall be concurrently canceled) the delivery of unit investment trust securities which are comparable to those originally bought in quantity, quality, yield or price and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller;

(B) if the purchaser’s options in paragraph (c)(1) are not available and the purchaser and seller cannot agree upon option (A), above, require the seller, for the account and liability of the seller, to repurchase the unit investment trust securities on terms which provide that the seller pay an amount which requires the seller to bear the burden of any change in the market price from the original contract price, with accrued interest. Bearing the burden of any change in the market price from the original contract price means that if the current market price is higher than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the current market price and conversely means that if the current market price is lower than the original contract price, the purchaser may require the seller to repurchase the unit investment trust securities at the original contract price, with accrued interest.

**(d) “Buy-in” Not Completed**

(1) In the event that a “buy-in” is not completed pursuant to the provisions of paragraph (b) hereof on the day specified in the notice of “buy-in,” or as such date may be extended pursuant to the provisions of paragraph (f) or (g) hereof, said notice shall expire at the close of business on the day specified in the notice of buy-in.

(2) When a “buy-in” notice is pending during a reconfirmation and

pricing period and one or more members are participating in a reconfirmation and pricing service, such “buy-in” notice shall be canceled. Written notice of cancellation must be received by the non-participating member prior to the original or extended date of execution. Failure to provide such notification may result in an execution. New notice of “buy-in” may be issued no earlier than the first business day following the final reconfirmation and pricing settlement date.

**(e) Partial Delivery by Seller**

Prior to the closing of a contract on which a “buy-in” notice has been given, the buyer shall accept any portion of the securities called for by the contract, provided the portion remaining undelivered at the time the buyer proposes to execute the “buy-in” is not an amount which includes an odd-lot which was not part of the original transaction.

**(f) Securities in Transit**

If prior to the closing of a contract on which a “buy-in” notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are (1) in transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers, except for those securities due from a depository, then the buyer must extend the execution date of the “buy-in” for a period of seven (7) calendar days from the date delivery was due under the “buy-in.” Upon request of the seller, an additional extension of seven (7) calendar days may be granted by Nasdaq Regulation due to the circumstances involved.

**(g) Notice of Executed “Buy-In”**

The party executing the “buy-in” shall immediately upon execution, but no later than the close of business, local time, where the seller maintains his office, notify the broker/dealer for whose account the securities were bought as to the quantity purchased and the price paid. Such notification should be in written or electronic form having immediate receipt capabilities. If this written media is not available the telephone shall be used for the purpose of same day notification, and written or similar electronic notification having next day receipt capabilities must also be sent out simultaneously. In either case formal confirmation of purchase along with a billing or payment, (depending upon which is applicable), should be forwarded as promptly as possible after the execution of the “buy-in.” Notification of the execution of a “buy-in” shall be given to succeeding broker/dealers to whom a re-transmitted notice was issued pursuant to paragraph (b) using the same procedures stated herein. If a re-transmitted “buy-in” is executed, it will operate to close out all contracts covered under the re-transmitted notice.

**(h) “Close-Out” Under Nasdaq Regulation, Securities Association or Other Exchange Rulings**

(1) When a national securities association or another exchange makes a ruling that all open contracts with a particular member, who is also a member of

Nasdaq, should be closed-out immediately (or any similar ruling), members may close-out contracts as directed by the securities association or exchange.

(2) Whenever Nasdaq Regulation ascertains that a court has appointed a receiver for any member because of its insolvency or failure to meet its obligations, or whenever Nasdaq Regulation ascertains, based upon evidence before it, that a member cannot meet its obligations as they become due and that such action will be in the public interest, Nasdaq Regulation may, in its discretion, issue notification that all open contracts with the member in question may be closed-out immediately.

(3) Within the meaning of this paragraph (b), to close-out immediately shall mean that (A) “buy-ins” may be executed without prior notice of intent to “buy-in” and (B) “sell-outs” may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this paragraph shall be executed for the account and liability of the member in question. Notification of all close-outs shall immediately be sent to such member pursuant to the confirmation provisions of the Rule 11200 Series.

**(i) Failure to Deliver and Liability Notice Procedures**

(1) (A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). Such Notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 a.m. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. Such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and

has not been canceled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) In all cases, members must be prepared to document requests for which a Liability Notice is initiated.

(2) If the delivering member fails to deliver the securities on the expiration date, the delivering member shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with the provisions of this Rule shall serve as notification by the receiving member of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) For the purposes of this Rule, the term “expiration date” shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.

(4) If the above procedures are not utilized as provided under this Rule, contracts may be “bought-in” without prior notice, after normal delivery hours established in the community where the buyer maintains his office, on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting member.

**(j) Contracts Made for Cash**

Contracts made for “cash,” or made for or amended to include guaranteed delivery on a specified date may be “bought-in” without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in paragraphs (a) through (f) of this Rule shall apply. In all cases, notification of executed “buy-in” must be provided pursuant to paragraph (g) of this Rule. “Buy-ins” executed in accordance with this paragraph shall be for the account and risk of the defaulting broker/dealer.

**(k) Information on Notices**

Notices of “buy-in” and “re-transmitted buy-in” shall include all information contained in the sample forms prescribed by Nasdaq.

**(l) “Buy-In” Desk Required**

Members shall have a “buy-in” section or desk adequately staffed to process and research all “buy-ins” during normal business hours.

**(m) Buy-In of Accrued Securities**

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such

securities remaining undelivered at that time shall be subject to the “buy-in” procedures as provided under this Rule.

## **11820. Selling-Out**

### **(a) Conditions Permitting “Sell-Out”**

Upon failure of the buyer to accept delivery in accordance with the terms of the contract, and lacking a properly executed Uniform Reclamation Form or the equivalent depository generated advice for depository eligible securities meeting the requirements prescribed in Rule 11710(b), the seller may, without notice, “sell-out” in the best available market and for the account and liability of the party in default all or any part of the securities due or deliverable under the contract.

### **(b) Notice of “Sell-Out”**

The party executing a “sell-out” as prescribed above shall, as promptly as possible on the day of execution, but no later than the close of business, local time, where the buyer maintains his office, notify the broker/dealer for whose account and risk such securities were sold of the quantity sold and the price received. Such notification should be in written or electronic form having immediate receipt capabilities. A formal confirmation of such sale should be forwarded as promptly as possible after the execution of the “sell-out.”

## **11830. Reserved.**

## **11840. Rights and Warrants**

### **(a) Definition - “Rights”**

The term “rights” or “rights to subscribe,” as used in this Rule is the privilege offered to holders of record of issued securities to subscribe (usually on a pro rata basis) for additional securities of the same class, of a different class, or of a different issuer as the case may be.

### **(b) Definition - “Warrants”**

The term “warrants” or “stock purchase warrants” as used in this Rule is an instrument issued separately or accompanying other securities, but not necessarily issued to stockholders of record as of a specific date; i.e., warrants issued with or attached to bonds, common stock, preferred stocks, etc. The instrument represents the privilege to purchase securities at a stipulated price or prices and is usually valid for several years.

### **(c) Basis and Unit of Trading - Rights**

Except as otherwise designated by Nasdaq Regulation, transactions in rights to subscribe shall be on the basis of one right accruing to each share of issued stock and the

unit of trading in rights shall be 100 rights (unless otherwise specified).

**(d) Basis and Unit of Trading - Warrants**

Except as otherwise agreed or designated by Nasdaq Regulation, transactions in stock purchase warrants shall be on the basis of one warrant representing the right of the purchaser to receive one warrant in settlement of such transaction and the unit of trading shall be 100 warrants. Members must ascertain how many warrants they have to sell, what each warrant entitles the holder to purchase, the purchase price, and the current price of the warrant relative to the price of the underlying security which may be purchased. Trades in warrants should be properly described on comparisons and confirmations.

**(e) Securities Which Have Expired by Their Terms**

(1) In contracts for warrants, rights or other securities which have expired by their terms, deliveries effected more than thirty (30) days after expiration shall be consist of (A) the expired securities; or (B) a Letter of Indemnity in lieu of the expired instrument.

(2) In the case of units or other securities of which one or more of the integral parts of the instrument has expired by its terms, after expiration, the instrument shall cease to be a unit as originally contemplated in the contract. Deliveries effected after expiration shall consist of the unexpired security and (A) the expired instrument; or (B) a Letter of Indemnity in lieu of the expired instrument.

(3) Deliveries effected pursuant to paragraphs (e)(1) and (2) of this Rule shall be settled at the existing contract price.

**IM-11840. Sample Letter of Indemnity**

DATE\_\_\_\_\_

TO: \_\_\_\_\_

RE: \_\_\_\_\_

(Quantity and Description)

CUSIP #\_\_\_\_\_

For value received the undersigned hereby assigns, transfers and sets over to you all rights and privileges which may accrue on the above contract made on (Date of Contract) ----- at (Contract Price)----- for settlement (Settlement Date).



Upon acceptance of this delivery in lieu of physical certificates, we agree, for ourselves, our successors, assigns, heirs, executors and administrators, to at all times indemnify and hold harmless from and against any and all claims, liabilities, damages, taxes, charges and expense sustained or incurred by reason of this action. Acceptance of this delivery shall operate to close- out the above stated contract in accordance with the provisions of Nasdaq's Uniform Practice Code.

.....  
(Member Firm)

.....  
(Official Signature)

If any questions, please contact ..... at (telephone Number) .....

**11850. Reserved**

**11860. Acceptance and Settlement of COD Orders**

(a) Nasdaq members shall comply with NASD Rule 11860 as if such Rule were part of Nasdaq's rules.

(b) Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 11860 by complying with NASD Rule 11860 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 11860 are being performed by NASD Regulation on behalf of Nasdaq.

**11870. Customer Account Transfer Contracts**

(a) Nasdaq members shall comply with NASD Rule 11870 as if such Rule were part of Nasdaq's rules.

(b) Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 11870 by complying with NASD Rule 11870 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 11870 are being performed by NASD Regulation on behalf of Nasdaq.

(c) Pursuant to the Rule 9600 Series, Nasdaq may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member, or (B) any type of account, security or financial instrument.

**IM-11870. Sample Transfer Instruction Forms**

**(a) Customer Account Transfer**

**CUSTOMER SECURITIES ACCOUNT TRANSFER INSTRUCTION**

.....  
(Date)

RECEIVING FIRM ..... CARRYING FIRM  
.....

RECEIVING FIRM CARRYING FIRM  
ACCOUNT NUMBER ..... ACCOUNT NUMBER  
.....

ACCOUNT TITLE  
.....  
.....

ACCOUNT TYPE ..... (C = CASH, M = MARGIN)

TAX ID OR SS NUMBER  
.....

TO .....  
(Receiving Firm Name and Address)

Please receive my entire securities account from the below indicated carrying firm and remit to it the debit balance or accept from it the credit balance in my securities account.

TO .....  
(Carrying Firm Name and Address)

Please transfer my entire securities account to the above indicated receiving firm, which has been authorized by me to make payment to you of the debit balance or to receive payment of the credit balance in my securities account. I understand that to the extent any assets or

instruments in my securities account are not readily transferable, with or without penalties, such assets or instruments may not be transferred within the time frames required by Rule 11870 of Nasdaq's Uniform Practice Code.

I understand that you will contact me with respect to the disposition of any assets in my securities account that are nontransferable. If certificates or other instruments in my securities account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable such receiving firm to transfer them in its name for the purpose of sale, when and as directed by me. I further instruct you to cancel all open orders for my securities account on your books.

I affirm that I have destroyed or returned to you any credit/debit cards and/or unused checks issued to me in connection with my securities account.

.....  
(Customer's Signature) (Date)

.....  
(Customer's Signature if Joint Account) (Date)

[It is suggested that a copy of the customer's most recent account statement be attached.]

Receiving Firm Contact:

Name ..... Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( ) Dividend Cash/Capital Gains Reinvest ( )

All Cash ( ) Deposit to New Plan ( )

Issue Certificate ( ) Deposit to Existing Plan ..... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch

.....

**(b) Customer Retirement Account Transfer**

**CUSTOMER RETIREMENT PLAN SECURITIES ACCOUNT  
TRANSFER INSTRUCTION**

RECEIVING FIRM ..... CARRYING FIRM  
.....

RECEIVING FIRM CARRYING FIRM  
ACCOUNT NUMBER ..... ACCOUNT NUMBER  
.....

ACCOUNT TITLE  
.....  
.....

ACCOUNT TYPE ..... (I = IRA, Q = QUALIFIED)

TAX ID OR SS NUMBER  
.....

TO .....  
(Prior Custodian/Trustee Name, Address and Tax ID Number)

You are the custodian/trustee for my retirement plan securities account with  
.....  
(Carrying Firm Name and Address)

as my broker. Please be advised that I have amended my retirement plan and have adopted a  
new retirement plan with the below indicated as successor custodian/trustee and  
.....as broker  
(Receiving Firm Name and Address)

Pursuant to said amendment, please transfer all assets in my securities account to such  
successor custodian/trustee. I understand that to the extent any assets in my account are not  
readily transferable, with or without penalties, such assets may not be transferred within the

time frames required by Rule 11870 of Nasdaq's Uniform Practice Code.

I understand that the above indicated carrying firm will contact me with respect to the disposition of any assets in my account that are nontransferable. I authorize you to deduct any outstanding fees due you from the credit balance in my account. If my account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due you, I authorize you to liquidate the assets in my account to the extent necessary to satisfy any outstanding fees due you. If certificates or other instruments in my account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax waivers, to enable the successor custodian/trustee to transfer them in its name for the purpose of sale, when and as directed by me. Upon receiving a copy of this transfer instruction, the carrying firm will cancel all open orders for my account on its books.

.....  
(Customer's Signature) ..... (Date)

Please be advised that

.....  
(Successor Custodian/Trustee Name, Address and Tax ID Number)

will accept the above captioned account as successor custodian/trustee.  
Please send all checks to

.....and non-DTC eligible items  
to

.....

.....  
(Successor Custodian/Trustee Authorized Signature) ..... (Date)

.....  
(Tax ID Number) ..... (Date of Trust)

[It is suggested that a copy of the customer's most recent account statement be attached.]

Receiving Firm Contact:

Name ..... Phone Number .....

For Broker Use Only:

Mutual Fund Registration Instructions:

Registration Name

.....

Address .....

Tax ID # .....

Dividend and Capital Gains Options:

Reinvest ( )

Dividend Cash/Capital Gains Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan ..... ( )

Broker Instructions (if broker agreement exists):

Name .....

Address .....

RR Name/Number/Branch

.....

**(c) Mutual Fund Re-Registration**

**MUTUAL FUND RE-REGISTRATION INSTRUCTIONS  
USED FOR BROKER-TO-BROKER TRANSFERS**

(1) TO: ..... Date: .....

Transfer Agent: .....

Address: .....

(2) Present

Name of Fund: .....

Account

Information

Fund A/C #: .....

Certificate # (if in physical form)

[Certificate attached must be in negotiable form.]

Account Registration: .....

(3)(A) Broker  
Identification

Old Firm Name and  
In-house A/C# .....

(3)(B)

New Firm Name and

In-house A/C# .....

(4) Registration Instructions

Please transfer ..... shares from the above-referenced account and register as follows:

Name .....

Address .....

Tax ID # .....

Dividend and Capital Gains Option:

Reinvest ( )

Dividend Cash/Capital Gains Reinvest ( )

All Cash ( )

Deposit to New Plan ( )

Issue Certificate ( )

Deposit to Existing Plan ..... ( )

(5) Broker/Dealer Instructions

If a Broker/Dealer Agreement exists:

Name .....

Address .....

RR Name/Number/Branch .....

(6) Release

In consideration for your complying with the above request, we hereby agree to indemnify the:

..... (fund)

and

..... (agent)

against any and all losses incurred hereof.

Thank you in advance for your cooperation in this matter.

Sincerely,

(Signature Guarantee Stamp)

.....  
Authorized Signature

If there are any questions call:

.....  
(Signature of Delivering Broker) (Phone Number)

.....  
(Signature of Receiving Broker) (Phone Number)

Items 1, 2, 3a are completed by the delivering broker.

Items 3b, 4 and 5 are completed by the receiving broker.

**11880. Settlement of Syndicate Accounts**

**(a) Definitions**

(1) "Selling syndicate" means any syndicate formed in connection with a public offering to distribute all or part of an issue of corporate securities by sales made directly to the public by or through participants in such syndicate.

(2) "Syndicate account" means an account formed by members of the selling syndicate for the purpose of purchasing and distributing the corporate securities of a public offering.

(3) "Syndicate manager" means the member of the selling syndicate that is responsible for maintenance of syndicate account records.

(4) "Syndicate settlement date" means the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members.

**(b)** Final settlement of syndicate accounts shall be effected by the syndicate manager within 90 days following the syndicate settlement date.

**(c)** No later than the date of final settlement of the syndicate account, the syndicate manager shall provide to each member of the selling syndicate an itemized statement of syndicate expenses that shall include, where applicable, the following categories of expenses: legal fees; advertising; travel and entertainment; closing expenses; loss on oversales; telephone; postage; communications; co-manager's expenses; computer, data processing charges; interest expense; and miscellaneous. The amount under "miscellaneous" should not be disproportionately large in relation to other items and should include only minor items that cannot be easily categorized elsewhere in the statement. Any other major items not included in the above categories shall be itemized separately.



#### **(d) Settlement of Underwritten Public Offerings**

The syndicate manager of a public offering underwritten on a “firm-commitment” basis shall, immediately, but in no event later than the scheduled closing date, notify Nasdaq’s Uniform Practice Department of any anticipated delay in the closing of such offering beyond the closing date in the offering document or any subsequent delays in the closing date previously reported pursuant to this Rule.

### **11890. Clearly Erroneous Transactions**

#### **(a) Authority to Review Transactions Pursuant to Complaint of Market Participant**

##### **(1) Scope of Authority**

(A) Subject to the limitations described in paragraph (a)(2)(C) below, officers of Nasdaq designated by its President shall, pursuant to the procedures set forth in paragraph (a)(2) below, have the authority to review any transaction arising out of the use or operation of any execution or communication system owned or operated by Nasdaq and approved by the Commission, including transactions entered into by a member of a national securities exchange with unlisted trading privileges in Nasdaq-listed securities (a "UTP Exchange") through such a system; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous. If the officer determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous if the transaction is eligible for review under the Rule and if there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

##### **(2) Procedures for Reviewing Transactions**

(A) Any member, member of a UTP Exchange, or person associated with any such member that seeks to have a transaction reviewed pursuant to paragraph (a)(1) hereof shall submit a written complaint to Nasdaq MarketWatch in accordance with the following time parameters:

(i) for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time, complaints must be received by Nasdaq by 10:30 a.m., Eastern Time; and

(ii) for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be received by Nasdaq within thirty minutes of execution time.

(B) Once a complaint has been received in accord with paragraph (a)(2)(A) above, the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1). Such supporting information must include the approximate time of transaction(s), security symbol, number of shares, price(s), contra broker(s) if the transactions are not anonymous, Nasdaq system used to execute the transactions, and the reason the review is being sought. If Nasdaq receives a complaint that does not contain all of the required supporting information, Nasdaq shall immediately notify the filer that the complaint is deficient.

(C) Following the expiration of the period for submission of supporting material, a Nasdaq officer shall determine whether the complaint is eligible for review. A complaint shall not be eligible for review under paragraph (a) unless:

(i) the complainant has provided all of the supporting information required under paragraph (a)(2)(B), and

(ii) The price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:

**Inside Price Minimum Threshold**

\$0 – \$0.99	$\$0.02 + (0.10 \times \text{Inside Price})$
\$1.00 – \$4.99	$\$0.12 + (0.07 \times (\text{Inside Price} - \$1.00))$
\$5.00 – \$14.99	$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00))$
\$15 or more	\$1.00

For a transaction to buy (sell) a Nasdaq listed security, the inside price shall be the best offer (best bid) in Nasdaq at the time that the first share of the order that resulted in the disputed transaction was executed, and for a transaction to buy (sell) an exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed.

(D) If a complaint is determined to be eligible for review, the counterparty to the trade shall be notified of the complaint via telephone by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(1). Either party to a disputed trade may request the written information provided by the other party pursuant to paragraph (a)(2).

(E) Notwithstanding paragraphs (a)(2)(B) and (D) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(1) above.

(F) Each member, member of a UTP Exchange, or person associated with any such member involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraphs (a)(2)(B) and (D) above.

(G) Once a party has applied to Nasdaq for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(1), or (ii) the complainant withdraws its application for review prior to the notification of counterparties pursuant to paragraph (a)(2)(D).

#### **(b) Procedures for Reviewing Transactions on Nasdaq's Own Motion**

In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the

protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue.

**(c) Review by the Market Operations Review Committee ("MORC")**

(1) Subject to the limitations described in paragraph (c)(2), a member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (b) to the MORC unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by Nasdaq by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the MORC. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the MORC shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), once a party has appealed a determination to the MORC, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the MORC, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such hearings as it may in its discretion order, the MORC, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided under paragraph (c)(1). If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand

the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

(3) The decision of the MORC pursuant to an appeal, or a determination by a Nasdaq officer that is not appealed, shall be final and binding upon all parties and shall constitute final Nasdaq action on the matter in issue. Any determination by a Nasdaq officer pursuant to paragraph (a) or (b) or any decision by the MORC pursuant to paragraph (c) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

#### **(d) Communications**

(1) All materials submitted to Nasdaq or the MORC pursuant to this Rule shall be submitted within the time parameters specified herein via such telecommunications procedures as Nasdaq may announce from time to time in an Notice to Members or Head Trader Alert. Materials shall be deemed received at the time indicated by the telecommunications equipment (e.g., facsimile machine or computer) receiving the materials. Nasdaq, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to paragraph (b), Nasdaq may instead provide notice to parties via Nasdaq telecommunications protocols, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

#### **IM-11890-1. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC**

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.

#### **IM-11890-2. Review by Panels of the MORC**

For purposes of Rule 11890 and other Nasdaq Rules that permit review of Nasdaq decisions by the MORC, a decision of the MORC may be rendered by a panel of the MORC. In the case of a review of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members

of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

### **IM-11890-3. Application of Rule 11890(a)(2)(C)**

The following example is intended to assist market participants in understanding the minimum price deviation thresholds in paragraph (a)(2)(C) and their effect on the eligibility of transactions for review under Rule 11890.

ABCD, a Nasdaq listed security, has an inside market of (bid) \$12.00 – \$12.05 (ask). Market Maker A (MMA) enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order 'sweeps' the Nasdaq Market Center order file, which reflects 1,000 shares of liquidity offered at each of ten prices ranging from \$12.05 to \$12.95. Executions occur, moving through the depth of file, as follows:

- Trade #1 – 1000 shares @ \$12.05 (9000 remaining)
- Trade #2 – 1000 shares @ \$12.10 (8000 remaining)
- Trade #3 – 1000 shares @ \$12.15 (7000 remaining)
- Trade #4 – 1000 shares @ \$12.25 (6000 remaining)
- Trade #5 – 1000 shares @ \$12.35 (5000 remaining)
- Trade #6 – 1000 shares @ \$12.45 (4000 remaining)
- Trade #7 – 1000 shares @ \$12.55 (3000 remaining)
- Trade #8 – 1000 shares @ \$12.65 (2000 remaining)
- Trade #9 – 1000 shares @ \$12.90 (1000 remaining)
- Trade #10 – 1000 shares @ \$12.95 (complete)

The inside offer at the time the first share of the order was executed is \$12.05, so the minimum price deviation threshold is determined using the following formula:  
$$\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00)) = \$0.40 + (0.06 \times (\$12.05 - \$5.00)) = \$0.82$$
Thus, to be eligible for review, a transaction must be at a price that is at least \$0.82 higher than the original best offer price (i.e., \$12.05 + \$0.82 = \$12.87). MMA could petition for review of trades #9 and #10, priced at \$12.90 and \$12.95 respectively, but trades #1 through #8 would not be eligible for review. The sole basis for an appeal to the MORC of the determination that trades #1 through #8 are not eligible for review would be an assertion of a mistake of material fact. For example, an appeal could be based upon an assertion that the Nasdaq officer had made an arithmetical error in determining the minimum price deviation threshold, or had erred in determining the applicable inside price.