

MARKETPLACE RULES

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MARKETPLACE RULES

4000. THE NASDAQ STOCK MARKET

4100. GENERAL

4110. Use of Nasdaq on a Test Basis

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

4120. Trading Halts

(a) Authority to Initiate Trading Halts

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

- (1) halt trading on Nasdaq of a Nasdaq-listed security to permit the dissemination of material news; or
- (2) halt trading on Nasdaq of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or
- (3) halt trading by: (i) ITS/CAES Market Makers in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx (“operational trading halt”); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. ITS/CAES Market Makers and Nasdaq Market Makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b); or
- (4) halt trading in an American Depositary Receipt (“ADR”) or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or
- (5) halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

- (A) material news;

(B) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300, 4400, and 4800 Series; or

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

(6) halt trading in a security listed on Nasdaq when

(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and

(B) Nasdaq determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C) (i) Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq;

(ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange; or

(iii) After consultation with NASD regarding an NASD facility trading the security, Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of such NASD facility or an electronic quotation, communication, reporting, or execution system linked to such NASD facility.

(7) Halt trading in a security that is the subject of an Initial Public Offering on Nasdaq.

(b) Procedure for Initiating a Trading Halt

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

(2) Notification shall be provided directly to Nasdaq's MarketWatch Department by telephone, facsimile, or other compatible means of electronic

communication.¹ Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

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

(4) Should Nasdaq determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the commencement of a trading halt through major wire services.

(5) Trading in a halted security shall resume at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the resumption of trading through major wire services.

(6) (i) In the case of a trading halt under Rule 4120(a)(6) based on the misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is not operated by Nasdaq, Nasdaq will promptly contact the operator of the system in question (as well as any national securities exchange or NASD facility to which such system is linked) to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated.

(ii) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as Nasdaq determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity.

(7) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute period during which market participants may enter quotes in

¹ Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

that security in Nasdaq systems. At the conclusion of the 15-minute period, the halt shall be terminated and the security released for trading.

IM-4120-1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(e)(14) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions. Nasdaq issuers shall notify Nasdaq of the release of such material information that involves any of the events set forth below prior to its release to the public. Nasdaq recommends that Nasdaq issuers provide such notification at least ten minutes before such release.² Under unusual circumstances issuers may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its legitimate corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to Nasdaq upon request pursuant to Rules 4310(c)(15) or 4320(e)(13).

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

Trading Halts

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

² Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 6 p.m. and 7:30 a.m. Eastern Time, voice mail messages may be left on either number. Information communicated orally should be confirmed promptly in writing. The fax number is (240) 386-6047.

Nasdaq's MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the MarketWatch Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

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

Issuers are required to notify the MarketWatch Department of the release of material information included in the following list of events prior to the release of such information to the public. It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, Nasdaq encourages issuers to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

- (c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- (d) Senior management changes of a material nature or a change in control.
- (e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- (f) Events regarding the issuer's securities - e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- (g) Significant legal or regulatory developments.
- (h) Any event requiring the filing of a Form 8-K.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that an issuer chooses to utilize, issuers are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above prior to its release to the public. Nasdaq recommends that issuers provide such notification at least ten minutes before such release. When an issuer chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the issuer will be required to provide prior notice to the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the issuer's securities, the MarketWatch Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with issuers utilizing methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the issuer will cover the material information so that the halt can be commenced accordingly. Issuers will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Issuers are reminded that the posting of information on its own website is not by itself considered a sufficient method of public disclosure under Regulation FD, and as a result, under Nasdaq rules.

IM-4120-2. Disclosure of Written Notice of Staff Determination

Rule 4815(b) requires that an issuer make a public announcement through the news media disclosing the receipt of a Written Notice of Staff Determination ("Staff Determination") to prohibit continued listing of the issuer's securities under Rule 4815(a) as a result of the issuer's failure to comply with the continued listing requirements, and the Rule(s) upon which the Staff Determination was based. Such public announcement shall be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. If the public announcement is not made by the

issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

Rule 4815(b) does not relieve an issuer of its obligation to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

4200. DEFINITIONS

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

(1) "Act" means the Securities Exchange Act of 1934.

(2) "AICPA" means the American Institute of Certified Public Accountants.

(3) Reserved

(4) "Best efforts offering" means an offering of securities by members of a selling group under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.

(5) Reserved

(6) "Cash available for distribution" means cash flow of a limited partnership less amount set aside for restoration or creation of reserves.

(7) "Cash flow" means cash funds provided from limited partnership operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

(8) "Consolidated Quotations Service" (CQS) means the consolidated quotation collection system for securities listed on an exchange other than Nasdaq implementing SEC Rule 11 Acl-1.

(9) "Country of Domicile" means the country under whose laws an issuer is organized or incorporated.

(10) "Direct Registration Program" means any program by an issuer, directly or through its transfer agent, whereby a shareholder may have securities

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

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

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

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

(14) "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

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

(A) a director who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company;

(B) a director who accepted or who has a Family Member who accepted any payments from the company or any parent or subsidiary of the company in excess of \$60,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) payments arising solely from investments in the company's securities;

(iii) compensation paid to a Family Member who is a non-executive employee of the company or a parent or subsidiary of the company;

(iv) benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(v) loans from a financial institution provided that the loans (1) were made in the ordinary course of business, (2) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with the general public, (3) did not involve more than a normal degree of risk or other unfavorable factors, and (4) were not otherwise subject to the specific disclosure requirements of SEC Regulation S-K, Item 404;

(vi) payments from a financial institution in connection with the deposit of funds or the financial institution acting in an agency capacity, provided such payments were (1) made in the ordinary course of business; (2) made on substantially the same terms as those prevailing at the time for comparable transactions with the general public; and (3) not otherwise subject to the disclosure requirements of SEC Regulation S-K, Item 404; or

(vii) loans permitted under Section 13(k) of the Act.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 4350(d).

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company or by any parent or subsidiary of the company as an executive officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the company's securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the listed company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the listed company serve on the compensation committee of such other entity;

or

(F) a director who is, or has a Family Member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

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

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

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

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

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Act³;

(B) any of the investors' limited partnership securities are not, as of the date of the filing, reported under a transaction reporting plan

³ Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market, the New York Stock Exchange, and the American Stock Exchange.

declared effective before January 1, 1991, by the Commission under Section 11A of the Act;

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

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

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

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

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

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

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

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

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

(vi) a transaction, except as the Commission may otherwise provide for by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Act⁴; if:

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

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

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

(20) “Listed securities” means securities listed on Nasdaq or another national securities exchange.

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

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

(23) “Member” means a broker or dealer admitted to membership in Nasdaq.

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

(25) “Nasdaq National Market” or “NNM” is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are listed as Nasdaq

⁴ Transaction reporting plans under Section 11A were declared effective prior to January 1, 1991 for the Nasdaq National Market, the New York Stock Exchange, and the American Stock Exchange.

National Market securities.

(26) “Nasdaq National Market security” or “NNM security” means any security listed on Nasdaq which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420.

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

(28) “Nasdaq SmallCap Market security” or “SCM security” means any security listed on The Nasdaq SmallCap Market which (1) satisfies all applicable requirements of the Rule 4300 Series but that is not a Nasdaq National Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(29) Reserved.

(30) Reserved.

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

(32) “Reported security” means an equity security for which quotations are entered into the Consolidated Quotations Service.

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

(34) “SEC Rule 100,” “SEC Rule 101,” “SEC Rule 103,” and “SEC Rule 104” means the rules adopted by the Commission under Regulation M, and any amendments thereto.

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

(36) “Stabilizing bid” means the terms “stabilizing” or to “stabilize” as defined in SEC Rule 100.

(37) “Transaction costs” means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or

tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

(38) “Underwriting Activity Report” is a report provided by the Corporate Financing Department of NASD Regulation, Inc. in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

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

(c) All forms and applications relating to listing of securities on Nasdaq referenced in the Rule 4000 Series are available on www.nasdaq.com.

4200-1 DEFINITIONS

The director independence requirements set forth in Rule 4200-1(a)(14) shall continue to apply to any company until Rule 4200(a)(15) becomes effective for such company, as set forth in Rule 4350(a)(5).

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

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

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

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

(C) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate

family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home;

(D) a director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the past three years;

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

IM - 4200 Definition of Independence - Rule 4200(a)(15)

It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. Rule 4200 also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 4350.

The Rule's reference to a "parent or subsidiary" is intended to cover entities the issuer controls and consolidates with the issuer's financial statements as filed with the Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). The reference to executive officer means those officers covered in SEC Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 4200(a)(14), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the company is not independent until three years after such employment terminates.

Paragraph (B) of the Rule is generally intended to capture situations where a payment is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family

Member of the director or political contributions to the campaign of a director or a Family Member of the director would be considered under paragraph (B) of the Rule. Subparagraph (v) clarifies that a loan from a financial institution that was exempt from specific disclosure pursuant to Instruction 3 to SEC Regulation S-K, Item 404(c) will not preclude a finding of director independence. Subparagraph (vi) clarifies that certain payments from financial institutions will not preclude a finding of director independence. In particular, subparagraph (vi) is intended to capture standard, non-preferential payments made by financial institutions in the ordinary course of business such as interest payments made by a bank on deposits, certificates of deposits, or savings bonds.

Furthermore, subparagraph (vi) is intended to capture technical “payments” made by a financial institution to its customers when the financial institution acts as an agent for its customers. For example, when a brokerage firm receives dividends for securities held by a customer, it will make a “payment” of the dividend amount to that customer. Likewise, when a brokerage firm executes a customer’s order to sell the customer’s securities, it will make a “payment” of the proceeds to the customer. Subparagraph (vi) clarifies that agency payments, such as those described above, shall not preclude a finding of director independence.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling shareholder or executive officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact Nasdaq if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than SEC Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an executive officer of a charitable organization may not be considered independent if the company makes payments to the charity in excess of the greater of 5% of the charity’s revenues or \$200,000. However, Nasdaq encourages companies to consider other situations where a director or their Family Member and the company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, SEC Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer’s audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 4200(a)(15)(D), which looks to whether the payment exceeds the greater of 5% of the recipient’s gross revenues or \$200,000; however, if the firm is a sole proprietorship, Rule 4200(a)(15)(B), which looks to whether the payment exceeds \$60,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an “interested person” of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

4300. LISTING REQUIREMENTS FOR NASDAQ SECURITIES

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

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

4310. Listing Requirements for Domestic and Canadian Securities

To qualify for listing in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a), (b), and (c) hereof. Issuers that meet these requirements, but that are not listed on the Nasdaq National Market, are listed on the Nasdaq SmallCap Market.

(a) A security shall be considered for listing on Nasdaq provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) An issuer that wishes to have a security listed on Nasdaq shall submit to Nasdaq a listing application that provides the information required by Section 12(b) of the Act on the form designated by Nasdaq. Upon approval of a listing application, Nasdaq shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can

commence only upon effectiveness of the security's registration pursuant to Section 12(d).

(c) In addition to the requirements contained in paragraph (a) and (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for listing on Nasdaq:

(1) For initial listing, the issue shall have three registered and active market makers, and for continued listing, the issue shall have two registered and active market makers, one of which may be a market maker entering a stabilizing bid.

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

(i) stockholders' equity of \$5 million;

(ii) market value of listed securities of \$50 million (currently traded issuers must meet this requirement and the bid price requirement under Rule 4310(c)(4) for 90 consecutive trading days prior to applying for listing); or

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

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

(i) stockholders' equity of \$2.5 million;

(ii) market value of listed securities of \$35 million; or

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

(3) For initial listing, the issuer shall have an operating history of at least one year or a market value of listed securities of \$50 million.

(4) For initial listing, common stock, preferred stock and secondary classes of common stock shall have a minimum bid price of \$4 per share. For continued listing the minimum bid price per share shall be \$1.

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

(6) (A) In the case of common stock, there shall be at least 300 round lot holders of the security.

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is listed on either Nasdaq or another national securities exchange. In the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.

(7) (A) In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial listing and 500,000 publicly held shares for continued listing. For initial listing such shares shall have a market value of at least \$5 million. For continued listing such shares shall have a market value of at least \$1 million.

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least \$2 million for initial listing and 100,000 publicly held shares having a market value of \$500,000 for continued listing. In addition, the issuer's common stock or common stock equivalent security must be listed on either Nasdaq or another national securities exchange. In the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

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

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

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

(D) A failure to meet the continued listing requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided, that on the 180th day of the first compliance period, the issuer demonstrates that it meets the criteria for initial listing set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), based on the issuer's most recent public filings and market information. If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial listing criteria, it shall not be eligible for the additional compliance period under this rule.

Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(E) Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the

number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

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

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

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

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

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

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

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

(13) The issuer shall pay the Nasdaq Issuer Listing Fee described in the Rule 4500 Series.

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

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

(16) Except in unusual circumstances, a Nasdaq-listed issuer shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The issuer shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's Market Watch Department if the information involves any of the events set forth in IM-4120-1.⁵

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

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

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

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

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

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

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

⁵ Notification may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

rules.

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

(21) [Reserved]

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

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

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

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

(ii) in the case of any new issue distributed by an underwriting syndicate prior to the date a securities depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on Nasdaq, such later date designated by the managing underwriter in a notification submitted to the securities depository; but in no event more than three (3) months after the commencement of trading in such security on Nasdaq.

(24) The issuer shall file, on a form designated by Nasdaq no later than 10

days after the occurrence, any aggregate increase or decrease of any class of securities listed on Nasdaq that exceeds 5% of the amount of securities of the class outstanding.

(25) [Reserved]

(26) [Reserved]

(27) [Reserved]

(28) [Reserved]

(29) [Reserved]

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

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

To qualify for listing on Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b), and (e) of this Rule. Issuers that meet these requirements, but that are not listed on the Nasdaq National Market, are listed on the Nasdaq SmallCap Market.

(a) A security of a foreign issuer, an ADR or similar security issued in respect of a security of a foreign issuer, other than a newly issued security, shall be considered for listing provided that it is:

(1) registered pursuant to Section 12(b) of the Act; or

(2) subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) An issuer that wishes to have a security listed on Nasdaq shall submit to Nasdaq a listing application that provides the information required by Rule 12(b) of the Act on the form designated by Nasdaq. Upon approval of a listing application, Nasdaq shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can commence only upon effectiveness of the security's registration pursuant to Section 12(d).

(c) Reserved.

(d) Reserved.

(e) In addition to the requirements contained in paragraphs (a) and (b), the security shall satisfy the criteria set out in this subsection for listing on Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued listing on Nasdaq.

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

(2) (A) For initial listing, the issue shall have a minimum bid price of \$4 and the issuer shall have:

(i) stockholders' equity of U.S. \$5 million;

(ii) market value of listed securities of U.S. \$50 million (currently traded issuers must meet this requirement for 90 consecutive trading days prior to applying for listing); or

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

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

(i) stockholders' equity of U.S. \$2.5 million;

(ii) market value of listed securities of U.S. \$35 million; or

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

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

(D) A failure to meet the continued listing requirements for market value of listed securities shall be determined to exist only if the

deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(E) (i) For initial listing, common stock, preferred stock and secondary classes of common stock, or their equivalents, shall have a minimum bid price of \$4 per share.

(ii) For continued listing, the minimum bid price per share shall be \$1. A failure to meet the continued listing requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided, that on the 180th day of the first compliance period, the issuer demonstrates that it meets the criteria for initial listing set forth in Rule 4320(e) (except for the bid price requirement set forth in this Rule 4320(e)(2)(E)(ii)) based on the issuer's most recent public filings and market information. If the issuer has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial listing criteria, it shall not be eligible for the additional compliance period under this rule. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(iii) Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(iv) Subparagraphs (E)(ii) and (E)(iii) of this Rule 4200(e)(2) shall not be effective until May 29, 2006.

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

(4) (A) There shall be at least 300 round lot holders of the security.

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is listed on either Nasdaq or another national securities exchange. In the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.

(5) (A) Prior to May 29, 2006, there shall be at least 1,000,000 publicly held shares for initial listing and 500,000 publicly held shares for continued listing. For initial listing, such shares shall have a market value of at least \$5 million. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial listing and 100,000 publicly held shares for continued listing. In addition, the issuer's common stock or common stock equivalent security must be listed on either Nasdaq or another national securities exchange. In the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(B) After May 29, 2006, there shall be at least 1,000,000 publicly held shares for initial listing and 500,000 publicly held shares for continued listing. For initial listing, such shares shall have a market value of at least \$5 million. For continued listing, such shares shall have a market value of at least \$1 million. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least \$2 million for initial listing and 100,000 publicly held shares having a market value of \$500,000 for continued listing. In addition, the issuer's common stock or common stock equivalent security must be listed on either Nasdaq or another national securities exchange. In the event the issuer's common stock or common

stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(6) In the case of rights, warrants and ADRs for initial listing only, at least 100,000 shall be issued. Issuers of ADRs must also meet the round lot holders and publicly held shares requirements set forth in subsections (4) and (5) above.

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

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

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

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

(11) The issuer shall pay the Nasdaq Issuer Listing Fee described in the Rule 4500 Series.

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

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

(14) Except in unusual circumstances, a Nasdaq-listed issuer shall make prompt disclosure to the public in the United States through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The issuer shall, prior to the release of the information, provide notice of such disclosure to Nasdaq if the information

involves any of the events set forth in IM-4120-1.⁶

(15) The issuer of any class of securities listed on Nasdaq, except for American Depositary Receipts, shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

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

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

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

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

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

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

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

(19) [Reserved]

⁶ Notificaton may be provided to the MarketWatch Department by telephone 1-800-537-3929 and (240) 386-6046. Between 7 p.m. and 7:30 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (240) 386-6047.

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

(21) [Reserved]

(22) [Reserved]

(23) [Reserved]

(24) [Reserved]

(25) [Reserved]

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

4330. Suspension or Delisting of a Security and Exceptions to Listing Criteria

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

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

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

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

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

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

pursuant to this subparagraph shall be submitted within a reasonable period. An issuer may be delisted or denied initial listing if it fails to provide such information. An issuer may also be delisted or denied initial listing if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading.

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

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

(f) An issuer must apply for initial listing following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a “Reverse Merger”). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

4340. Reserved

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

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

(a) Applicability

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee’s members meet the independence requirement in Rule 4350(d)(2)(A)(ii). A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in its annual reports

filed with the Commission each requirement of Rule 4350 that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in its registration statement.

(2) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 4350, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements of Rule 4350(c) and (n).

(3) Asset-backed Issuers and Other Passive Issuers. The following are exempt from the requirements of Rule 4350(c), (d) and (n): (a) asset-backed issuers; and (b) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(4) Cooperatives. Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rule 4350(c). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

(5) Effective Dates/Transition. In order to allow companies to make necessary adjustments in the course of their regular annual meeting schedule, and consistent with SEC Rule 10A-3, Rules 4200 and 4350 are effective as set out in this subsection. During the transition period between November 4, 2003 and the effective date of Rules 4200 and 4350 companies that have not brought themselves into compliance with these Rules shall continue to comply with Rules 4200-1 and 4350-1 which consist of sunseting sections of previously existing Rules 4200 and 4350.

The provisions of Rule 4200(a) and Rule 4350(c), (d) and (m) regarding director independence, independent committees, and notification of noncompliance shall be implemented by the following dates:

- July 31, 2005 for foreign private issuers and small business issuers (as defined in SEC Rule 12b-2); and
- For all other listed issuers, by the earlier of: (1) the listed issuer's first annual shareholders meeting after January 15, 2004; or (2) October 31, 2004.

In the case of an issuer with a staggered board, with the exception of the audit committee requirements, the issuer shall have until their second annual meeting after January 15, 2004, but not later than December 31, 2005, to implement all new requirements relating to board composition, if the issuer would be required to change a director who would not normally stand for election at an earlier annual meeting. Such issuers shall comply with the audit committee requirements pursuant to the implementation schedule bulleted above.

A company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to SEC Rule 10A-3(b)(1)(iv)(A). Accordingly, a company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Furthermore, a company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 4350(c). It should be noted, however, that pursuant to SEC Rule 10A-3(b)(1)(iii) investment companies are not afforded the exemptions under SEC Rule 10A-3(b)(1)(iv). Issuers may choose not to adopt a compensation or nomination committee and may instead rely upon a majority of the independent directors to discharge responsibilities under Rule 4350(c). For purposes of Rule 4350 other than Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies that are emerging from bankruptcy or have ceased to be Controlled Companies within the meaning of Rule 4350(c)(5) shall be permitted to phase-in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with their initial public offering. It should be noted, however, that a company that has ceased to be a Controlled Company within the meaning of Rule 4350(c)(5) must comply with the audit committee requirements of Rule 4350(d) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 4350(c)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

Companies transferring from other markets with a substantially similar

requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar requirement shall be afforded one year from the date of listing on Nasdaq. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

The requirement that a foreign private issuer disclose that it does not follow an otherwise applicable provision of Rule 4350 shall be effective for new listings and filings made after January 1, 2004.

Rule 4350(n), requiring issuers to adopt a code of conduct, shall be effective May 4, 2003.

Rule 4350(h), requiring audit committee approval of related party transactions, shall be effective January 15, 2004.

The remainder of Rule 4350(a) and Rule 4350(b) are effective November 4, 2004.

(b) Distribution of Annual and Interim Reports

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

(B) An issuer that receives an audit opinion that contains a going concern qualification must make a public announcement through the news media disclosing the receipt of such qualification. Prior to the release of the public announcement, the issuer must provide the text of the public announcement to the StockWatch section of Nasdaq's MarketWatch Department ("Nasdaq StockWatch").⁷ The public announcement shall be provided to Nasdaq StockWatch and released to the media not later than seven calendar days following the filing of such audit opinion in a public filing with the Securities and Exchange Commission.

(2) Each issuer which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The

⁷ Notification may be provided to Nasdaq StockWatch at 1-800-537-3929 or (240) 386-6046 (telephone), (240) 386-6047 (facsimile).

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

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

(4) Beginning with interim periods ending after January 1, 2006, each foreign private issuer shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter.

(c) Independent Directors

(1) A majority of the board of directors must be comprised of independent directors as defined in Rule 4200. The company must disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10-K or 20-F) those directors that the board of directors has determined to be independent under Rule 4200. If an issuer fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, the issuer shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the non-compliance.

(2) Independent directors must have regularly scheduled meetings at which only independent directors are present (“executive sessions”).

(3) Compensation of Officers

(A) Compensation of the chief executive officer of the company must be determined, or recommended to the Board for determination, either by:

(i) a majority of the independent directors, or

(ii) a compensation committee comprised solely of independent directors.

The chief executive officer may not be present during voting or deliberations.

(B) Compensation of all other executive officers must be determined, or recommended to the Board for determination, either by:

(i) a majority of the independent directors, or

(ii) a compensation committee comprised solely of independent directors.

(C) Notwithstanding paragraphs (3)(A)(ii) and (3)(B)(ii) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(4) Nomination of Directors

(A) Director nominees must either be selected, or recommended for the Board's selection, either by:

(i) a majority of the independent directors, or

(ii) a nominations committee comprised solely of independent directors.

(B) Each issuer must certify that it has adopted a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws.

(C) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the nominations committee if the board,

under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(D) Independent director oversight of director nominations shall not apply in cases where the right to nominate a director legally belongs to a third party. However, this does not relieve a company's obligation to comply with the committee composition requirements under Rule 4350(c) and (d).

(E) This Rule 4350(c)(4) is not applicable to a company if the company is subject to a binding obligation that requires a director nomination structure inconsistent with this rule and such obligation pre-dates the approval date of this rule.

(5) A Controlled Company is exempt from the requirements of this Rule 4350(c), except for the requirements of subsection (c)(2) which pertain to executive sessions of independent directors. A Controlled Company is a company of which more than 50% of the voting power is held by an individual, a group or another company. A Controlled Company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the issuer does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination.

(d) Audit Committee

(1) Audit Committee Charter

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

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

(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with

respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

(C) the committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer;

(D) the specific audit committee responsibilities and authority set forth in Rule 4350(d)(3).

(2) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be independent as defined under Rule 4200(a)(15); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c)); (iii) not have participated in the preparation of the financial statements of the company or any current subsidiary of the company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph (2)(A)(i), one director who: (i) is not independent as defined in Rule 4200; (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not a current officer or employee or a Family Member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

(3) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c)), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisors, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(4) Cure Periods

(A) If an issuer fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 4350(d)(2) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the non-compliance.

(B) If an issuer fails to comply with the audit committee composition requirement under Rule 4350(d)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the issuer will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the non-compliance.

(e) Shareholder Meetings

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

(f) Quorum

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

(g) Solicitation of Proxies

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

(h) Conflicts of Interest

Each issuer shall conduct an appropriate review of all related party transactions for potential conflict of interest situations on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404. However, in the case of small business issuers (as that term is defined in SEC Rule 12b-2), the term "related party transactions" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-B, Item 404, and in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(i) Shareholder Approval

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

(A) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(i) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan); or

(ii) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's independent compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

(iii) plans or arrangements relating to an acquisition or merger as permitted under IM-4350-5; or

(iv) issuances to a person not previously an employee or director of the company, or following a bonafide period of non-

employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

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

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

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

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

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

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

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

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

issuance; or

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

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

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

(B) reliance by the company on this exception is expressly approved by the audit committee or a comparable body of the board of directors.

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

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

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

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

(6) Where shareholder approval is required, the minimum vote which will constitute shareholder approval shall be a majority of the total votes cast on the proposal. These votes may be cast in person, by proxy at a meeting of shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C. Nothing contained in this Rule 4350(i)(6) shall affect an issuer's obligation to hold an annual meeting of shareholders as required by Rule 4350(e).

(j) Listing Agreement

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

(k) Peer Review

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

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

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

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

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

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

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

(l) Direct Registration Program

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

(m) Notification of Material Noncompliance

An issuer must provide Nasdaq with prompt notification after an executive officer of the issuer becomes aware of any material noncompliance by the issuer with the requirements of this Rule 4350.

(n) Code of Conduct

Each Issuer shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a “code of ethics” set out in Section 406(c) of the Sarbanes - Oxley Act of 2002 (“the Sarbanes-Oxley Act”) and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or executive officers must be approved by the Board. Issuers, other than foreign private issuers, shall disclose such waivers in a Form 8-K within four business days. Foreign private issuers shall disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F.

4350-1 Qualitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

Rule 4350-1(a),(c),(d) or (h) shall continue to apply to any company until Rule 4350 (a),(c),(d) or (h), respectively, becomes effective for such company. The effective dates of Rule 4350 (a),(c),(d) and (h) are set out in Rule 4350 (a)(5).

(a) Applicability

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

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

(c) Independent Directors

Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4350(d)(2).

(d) Audit Committee

(1) Audit Committee Charter

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

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

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

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

(2) Audit Committee Composition

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

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

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

(h) Conflicts of Interest

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

IM-4350-1. Interpretive Material Regarding Future Priced Securities

Summary

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

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

Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is \$1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

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

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

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

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice should contact the Nasdaq Office of General Counsel at (301) 978-8400 or Listing Qualifications Department at (301) 978-8008. Nasdaq will provide an issuer with a written interpretation of the application of Nasdaq Rules to a specific transaction, upon request of the issuer.

How the Rules Apply

Shareholder Approval

Rule 4350(i)(1)(D) provides, in part:

Each issuer shall require shareholder approval ... prior to the issuance of securities ... in connection with a transaction other than a public offering involving ... the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial

shareholders of the company equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.⁸

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

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20% or more of the common stock or voting power outstanding before the issuance of the Future Priced Security,² or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rule 4350(i)(1)(B) if the issuance will result in a change of control.

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Voting Rights

Rule 4351 provides:

⁸ Nasdaq may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

² See IM-4350-2, Interpretative Material Regarding the Use of Share Caps to Comply with Rule 4350(i).

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

IM-4351 also provides rules relating to voting rights of Nasdaq issuers.

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

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

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The Bid Price Requirement

The bid price requirement establishes a minimum bid price for issues listed on Nasdaq. Rules 4310(c)(4), 4320(e)(2)(E), 4450(a)(5) and 4450(b)(4) provide that, for an issue to be eligible for continued listing on Nasdaq, the minimum bid price per share shall be \$1. An issue is subject to delisting from Nasdaq if its bid price falls below \$1.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock.

Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement.¹⁰

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Listing of Additional Shares

Rule 4310(c)(17) provides:

The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to: . . . issuing securities that may potentially result in a change of control of the issuer; or . . . entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

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

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Public Interest Concerns

Rule 4300 provides:

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

Nasdaq Rule 4330(a) provides:

Nasdaq may ... deny initial listing or apply additional or more stringent criteria for the initial or continued listing of particular securities or suspend or delist an otherwise qualified security if ... Nasdaq deems it necessary to prevent fraudulent

¹⁰ If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

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

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

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Reverse Merger

Rule 4330(f) provides:

An issuer must apply for initial listing following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial listing standards following a Reverse Merger.¹¹ It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion,

¹¹ This provision is designed to address situations where a company attempts to obtain a "backdoor listing" on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a Reverse Merger with the holders of the Future Priced Securities. In such event, an issuer may be required to re-apply for initial listing and satisfy all initial listing requirements.

IM-4350-2. Interpretative Material Regarding the Use of Share Caps to Comply with Rule 4350(i)

Rule 4350(i) limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities.¹² Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.¹³ Issuers sometimes comply with the 20% limitation in this rule by placing a “cap” on the number of shares that can be issued in the transaction, such that there cannot, under any circumstances, be an issuance of 20% or more of the common stock or voting power previously outstanding without prior shareholder approval. If an issuer determines to defer a shareholder vote in this manner, shares that are issuable under the cap (in the first part of the transaction) must not be entitled to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction, unless shareholder approval is obtained. For example, caps that no longer apply if a company is not listed on Nasdaq are not permissible under the Rule. Of course, if shareholder approval is not obtained, then the investor will not be able to acquire 20% or more of the common stock or voting power outstanding before the transaction and would continue to hold the balance of the original security in its unconverted form.

Nasdaq has observed situations where issuers have attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, such as a “penalty” or a “sweetener.” For example, a company issues a convertible preferred stock or debt instrument that provides for conversions of up to 20% of the total shares outstanding with any further conversions subject to shareholder approval. However, the terms of the instrument provide that if shareholders reject the transaction, the coupon or conversion ratio will increase or the issuer will be penalized by a specified monetary payment. Likewise, a transaction may provide for improved terms if shareholder approval is obtained. Nasdaq believes that in such situations the cap is defective because the related penalty or sweetener has a

¹² An exception to this rule is available to issuers when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise. Rule 4350(i)(2). However, a share cap is not permissible in conjunction with the financial viability exception provided in Rule 4350(i)(2), because the application to Nasdaq and the notice to shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.

¹³ While Nasdaq’s experience is that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in Rule 4350(i)(1)(C)(i).

coercive effect on the shareholder vote, and thus may deprive shareholders of their ability to freely exercise their vote. Accordingly, Nasdaq will not accept a cap that defers the need for shareholder approval in such situations. Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no shares may be issued prior to the approval of the shareholders. Issuers that engage in transactions with defective caps may be subject to delisting.

Issuers having questions regarding this policy are encouraged to contact the Nasdaq Listing Qualifications Department at (301) 978-8008, which will provide a written interpretation of the application of Nasdaq Rules to a specific transaction, upon prior written request of the issuer.

IM-4350-3. Definition of a Public Offering

Rule 4350(i)(1)(D) provides that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under this rule, however, shareholder approval is not required for a “public offering.”

Issuers are encouraged to consult with Nasdaq staff in order to determine if a particular offering is a “public offering” for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Nasdaq staff will not treat an offering as a “public offering” for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a “public offering” for purposes of these rules, Nasdaq staff will consider all relevant factors, including but not limited to:

(i) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the issuer);

(ii) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);

(iii) the extent of the offering’s distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the issuer and those investors);

(iv) the offering price (including the extent of any discount to the market price of the securities offered); and

(v) the extent to which the issuer controls the offering and its distribution.

IM-4350-4 Board Independence and Independent Committees Independent Directors and Independent Committees - Rule 4350(c)

Majority Independent Board. Independent directors (as defined in Rule 4200(a)(15)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors empowers such directors to carry out more effectively these responsibilities.

Executive Sessions of Independent Directors. Regularly scheduled executive sessions encourage and enhance communication among independent directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

Independent Director Oversight of Executive Compensation. Independent director oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The rule is intended to provide flexibility for an issuer to choose an appropriate board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.

Independent Director Oversight of Director Nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. This rule is also intended to provide flexibility for a company to choose an appropriate board structure and reduce resource burdens, while ensuring that independent directors approve all nominations.

This rule does not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to nominate directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the company may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the company, independent director approval would not be required. This rule is not applicable if the company is subject to a binding obligation that requires a director nomination structure inconsistent with the rule and such obligation pre-dates the approval date of this rule.

Controlled Company Exemption. This exemption recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 4350(d) or the requirement for executive sessions of independent directors under Rule 4350(c)(2).

Audit Committees - Rule 4350(d)

Audit Committee Charter. Each issuer is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A-3(b)(3)(ii) requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 4350(d)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these issuers.

Audit Committee Composition. Audit committees are required to have a minimum of three members and be comprised only of independent directors. In addition to satisfying the independent director requirements under Rule 4200, audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c)): they must not accept any consulting, advisory, or other compensatory fee from the company other than for board service, and they must not be an affiliated person of the company. It is recommended that an issuer disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form 10-K or 20-F) if any director is deemed independent but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 401(h) of Regulation S-K or Item 401(e) of Regulation S-B is presumed to qualify as a financially sophisticated audit committee member under Rule 4350(d)(2)(A).

The Audit Committee Responsibilities and Authority. Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c)), concerning responsibilities relating to registered public accounting firms;

complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisors; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

Executive Officers. References to executive officers in Rule 4350 mean those officers covered in Rule 16a-1(f) under the Act.

IM-4350-5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 4350(i)(1)(A) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

- (1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);
- (2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;
- (3) any material expansion of the class of participants eligible to participate in the plan; and
- (4) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an “evergreen formula”), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess

of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances must be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would

view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 4350(i)(1)(A) and IM-4350-5, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

IM 4350-6. Applicability

1. Foreign Private Issuer Exception and Disclosure. A foreign private issuer (as defined in Rule 3b-4 under the Act) listed on Nasdaq may follow the practice in such issuer's home country (as defined in General Instruction F of Form 20-F) in lieu of some of the provisions of Rule 4350, subject to several important exceptions. First, such an issuer shall comply with Rule 4350(b)(1)(B) (Disclosure of Going Concern Opinion), Rule 4350(j) (Listing Agreement) and Rule 4350(m) (Notification of Material Noncompliance). Second, such an issuer shall have an audit committee that satisfies Rule 4350(d)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 4350(d)(2)(A)(ii) (the criteria set forth in Rule 10A-3(b)(1), subject to the exemptions provided in Rule 10A-3(c) under the Act). Finally, a foreign private issuer that elects to follow home country practice in lieu of a requirement

of Rule 4350 shall submit to Nasdaq a written statement from an independent counsel in such issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws. In the case of new listings, this certification is required at the time of listing. For existing issuers, the certification is required at the time the company seeks to adopt its first non-compliant practice. In the interest of transparency, the rule requires a foreign private issuer to make appropriate disclosures in the issuer's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the issuer's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F). The issuer shall disclose each requirement of Rule 4350 that it does not follow and include a brief statement of the home country practice the issuer follows in lieu of these corporate governance requirement(s).

2. Management Investment Companies. Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by Rule 4350. In light of this, Nasdaq exempts from Rule 4350(c) and (n) management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 4350.

3. Asset-backed Issuers and Other Passive Issuers. Because of their unique attributes, Rule 4350 (c), (d) and (n) do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities. This is consistent with Nasdaq's traditional approach to such issuers.

4. Cooperatives. Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule 4350 (c). Again, this is consistent with Nasdaq's traditional approach to such issuers.

5. Effective Dates/Transition Periods. The effective dates are intended to harmonize Nasdaq's rules with the requirements of the Sarbanes-Oxley Act and the rules issued by the Commission thereunder and to ensure that companies are allowed adequate time to implement the new rules. With respect to Rules 4200 and 4350, until the effective date of such rules, any company that has not brought itself into compliance must comply with the corresponding requirements of Rules 4200-1 and 4350-1.

IM-4350-7. Code of Conduct

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of an issuer is intended to demonstrate to investors that the board and management of Nasdaq issuers have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 4350(n) requires issuers to adopt a code of conduct complying with the definition of a “code of ethics” under Section 406(c) of the Sarbanes-Oxley Act of 2002 (“the Sarbanes-Oxley Act”) and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 4350(n) must apply to all directors, officers, and employees. Issuers can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a “code of ethics.”

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the company, as when the individual receives improper personal benefits as a result of his or her position with the company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the company. Also, the disclosures an issuer makes to the Commission are the essential source of information about the company for regulators and investors - there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board and must be disclosed to shareholders, along with the reasons for the waiver. All issuers, other than foreign private issuers, must disclose such waivers in a Form 8-K within four business days. Foreign private issuers must disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the company and its shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

4351. Voting Rights

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

IM-4351. Voting Rights Policy

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

Issuers with Dual Class Structures

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

Consultation with Nasdaq

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

Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a security in Nasdaq, Nasdaq will review the issuer's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the issuer's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review,

Nasdaq may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. Nasdaq will also review whether an issuer seeking initial listing of a security in Nasdaq has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, Nasdaq will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

Non-U.S. Companies

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

4360. Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships

(a) Applicability

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

(b) Distribution of Annual and Interim Reports

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

(2) (A) Each issuer that is a limited partnership which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310 (c)(14). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

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

(C) Beginning with interim periods ending after January 1, 2006, each foreign private issuer that is a limited partnership shall publish, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English but does not have to be reconciled to U.S. GAAP, must be provided not later than six months following the end of the issuer's second quarter. Such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(c) Corporate General Partner/Independent Directors

Each issuer that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership. Such corporate general or co-partner shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4350(d)(2).

(d) Audit Committee

The corporate general partner or co-general partner of each issuer that is a limited partnership must satisfy the audit committee requirements set forth in Rule 4350(d).

(e) Partner Meetings

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

limited partnership agreement.

(f) Quorum

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

(g) Solicitation of Proxies

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

(h) Listing Agreement

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

(i) Conflict of Interest

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

4370. Additional Requirements for Nasdaq-Listed Securities Issued by Nasdaq or its Affiliates

(a) For purposes of this Rule 4370, the terms below are defined as follows:

(1) "Nasdaq Affiliate" means The Nasdaq Stock Market, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with The Nasdaq Stock Market, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 4420(i)(1)(A) and Index Fund Shares as defined in Rule 4420(j)(1)(A).

(b) Upon initial and throughout continued listing of the Affiliate Security on The Nasdaq Stock Market, Nasdaq shall:

(1) file a report each month with the Commission detailing Nasdaq's monitoring of:

(A) the Nasdaq Affiliate's compliance with the provisions of the Rule 4200, 4300 and 4400 Series; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the Rule 4200, 4300 and 4400 Series and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

(c) In the event that Nasdaq determines that the Nasdaq Affiliate is not in compliance with any of the Rule 4200, 4300 and 4400 Series, Nasdaq shall file a report with the Commission at the same time that Nasdaq notifies the Nasdaq Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq Affiliate in the notice of non-compliance. Within five (5) business days of receipt of a plan of compliance from the Nasdaq Affiliate, Nasdaq shall notify the Commission of such receipt, whether the plan of compliance was accepted by Nasdaq or what other action was taken with respect to the plan and the time period provided to regain compliance with the Rule 4200, 4300 and 4400 Series, if any.

4390. ISSUER DESIGNATION REQUIREMENTS

Pursuant to SEC Rule 11Aa2-1, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission covering securities listed on Nasdaq.

IM-4390 Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq National Market ("NNM"). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

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

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under Nasdaq rules as a result of a single security being both a security subject to the CQ and CTA Plans (a “CQS security”), which is subject to one set of rules, and a listed NNM security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other Nasdaq rules. Treating dually listed securities as CQS securities under Nasdaq rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on Nasdaq.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. Nasdaq Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas Nasdaq Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than Nasdaq Rule 3350 governing short sales of Nasdaq-listed securities. Market makers in dually listed securities shall retain all obligations imposed by the Nasdaq Rule 5200 Series regarding CQS securities rather than assuming the obligations appurtenant to Nasdaq-listed securities. The fees applicable to CQS securities set forth in Nasdaq Rule 7010 shall continue to apply to dually listed issues.

4400. NASDAQ NATIONAL MARKET

4410. Applications for Listing

(a) Application for listing on the Nasdaq National Market shall be on a form supplied by Nasdaq and signed by a corporate officer of the issuer. Compliance with the listing criteria will be determined on the basis of information filed with the appropriate regulatory authority and the records of Nasdaq as of the application date. Nasdaq may

require the issuer to submit such other information as is relevant to a listing determination , including information required by paragraph (c) below.

(b) Upon approval of a listing application, Nasdaq shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the security for listing and registration. Listing can commence only upon effectiveness of the security's registration pursuant to Section 12(d).

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

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

(e) Issuers that are listed on Nasdaq pursuant to the Rule 4300 Series but that are not listed on the Nasdaq National Market are listed on the Nasdaq SmallCap Market.

4420. Quantitative Listing Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) below.

(a) Entry Standard 1- First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1) The issuer of the security had annual income from continuing operations before income taxes of at least \$1,000,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(2) There are at least 1,100,000 publicly held shares.

(3) The market value of publicly held shares is at least \$8 million.

(4) The bid price per share is \$5 or more.

(5) The issuer of the security has stockholders' equity of at least \$15 million.

(6) The issuer has a minimum of 400 round lot shareholders.

(7) There are at least three registered and active market makers with respect to the security.

(b) Entry Standard 2- First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1) The issuer of the security has stockholders' equity of at least \$30 million.

(2) There are at least 1,100,000 publicly held shares.

(3) The market value of publicly held shares is at least \$18 million.

(4) The bid price per share is \$5 or more.

(5) There are at least three registered and active market makers with respect to the security.

(6) The issuer has a two-year operating history.

(7) The issuer has a minimum of 400 round lot shareholders.

(c) Entry Standard 3 - First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

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

(1) There are at least 1,100,000 publicly held shares.

(2) The market value of publicly held shares is at least \$20 million.

(3) The bid price per share is \$5 or more.

(4) There are at least four registered and active market makers with respect to the security.

(5) The issuer has a minimum of 400 round lot shareholders.

(6) The issuer has:

(A) a market value of listed securities of \$75 million (currently traded issuers must meet this requirement and the bid price requirement under Rule 4420(c)(3) for 90 consecutive trading days prior to applying for listing); or

(B) total assets and total revenue of \$75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

(d) Rights and Warrants

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

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

(A) The minimum public distribution shall be at least 1 million warrants.

(B) The minimum number of public holders shall be at least 400.

(C) The aggregate market value of the outstanding index warrants shall be at least \$4 million.

(D) The issuer of the index warrants must have a minimum tangible net worth in excess of \$150 million.

(E) The term of the index warrant shall be for a period from one to five years.

(F) Limitations on Issuance -- Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, Nasdaq will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on Nasdaq or another national securities exchange exceeds 25% of the issuer's net worth.

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

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

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

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

(K) Only eligible broad-based indexes can underlie index warrants. For purposes of this subparagraph, eligible broad-based indexes shall include those indexes approved by the Commission to underlie index warrants or index options traded on Nasdaq or another national securities exchange.

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

(e) Computations

The computations required by paragraph (a)(1), (a)(5), and (b)(1) shall be taken from the issuer's most recent financial information filed with Nasdaq. The computations required in paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (c)(1), and (c)(2) shall be as of the

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

(f) Other Securities

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

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

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

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

(D) The aggregate market value/principal amount of the security shall be at least \$4 million.

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

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

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

(1) Issuer Listing Standards

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

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

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

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

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

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

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

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

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

(3) Minimum Standards Applicable to the Linked Security

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

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

SEEDS;

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

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

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

(C) be issued by:

(i) a U.S. company; or

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

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

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

c. 1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security

and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

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

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

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

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

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing;¹⁴ (ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.

¹⁴ The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded). If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing.

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

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

(h) Units

(1) Initial and Continued Listing Requirements

(a) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing under Rules 4420 and 4450, as applicable, or, in the case of debt components, satisfy the requirements of 4420(h)(1)(b).

(b) All debt components of a unit, if any, shall meet the following requirements:

(i) the debt issue must have an aggregate market value or principal amount of at least \$5 million;

(ii) the issuer of the debt security must have equity securities listed on the Nasdaq National Market; and

(iii) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(c) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements under Rules 4420 and 4450, as applicable.

(2) Minimum Listing Period and Notice of Withdrawal

In the case of units, the minimum listing period of the units shall be 30 days from the first day of listing, except the period may be shortened if the units

are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from listing must provide Nasdaq with notice of such intent at least 15 days prior to withdrawal.

(3) Disclosure Requirements for Units

Each Nasdaq National Market issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities laws and the rules and regulations promulgated thereunder a statement regarding any intention to delist the units immediately after the minimum inclusion period. The issuer of a unit shall further provide information regarding the terms and conditions of the components of the unit (including information with respect to any original issue discount or other significant tax attributes of any component) and the ratio of the components comprising the unit. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the change.

(i) Portfolio Depository Receipts

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security:

(i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount;

(iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and

(iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(B) Reporting Authority. The term “Reporting Authority” in respect to a particular series of Portfolio Depository Receipts means Nasdaq, a wholly-owned subsidiary of Nasdaq, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, and other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Portfolio Depository Receipts must be designated by Nasdaq; the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

(2) A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Depository Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Nasdaq requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio

Depository Receipts].”

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Depository Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

(3) Nasdaq may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Act, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depository Receipts, the component stocks of an index or portfolio underlying such series of Portfolio Depository Receipts shall meet the following criteria:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include a minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on Nasdaq (including The Nasdaq SmallCap Market) or another national securities exchange.

(B) Index Methodology and Calculation.

(i) The index underlying a series of Portfolio Depository Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Portfolio Depository Receipts trade on Nasdaq.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. NASD Regulation will implement written surveillance procedures for Portfolio Depository Receipts.

(4) Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by Nasdaq.

(5) Nasdaq may list and trade Portfolio Depository Receipts based on one or more stock indexes or securities portfolios. The Portfolio Depository Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depository Receipts are based shall be selected by Nasdaq or its agent, a wholly-owned subsidiary of Nasdaq, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(6) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing - for each Trust, Nasdaq will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing - following the initial twelve month period following formation of a Trust and commencement of trading on Nasdaq,

Nasdaq will consider the suspension of trading in or removal from listing of a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of a Trust, Nasdaq requires that Portfolio Depository Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term - the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Voting - voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(7) Neither Nasdaq, the Reporting Authority nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depository Receipts, resulting from any negligent act or omission by Nasdaq, the Reporting Authority, or any agent of Nasdaq or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(j) Index Fund Shares

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Index Fund Share. The term “Index Fund Share” means a security:

(i) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index;

(ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and

(iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(B) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Index Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by Nasdaq; the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

(2) A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members

under this rule.

Nasdaq requires that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].”

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Index Fund Shares.

(3) Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;

(ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) The most heavily weighted component stock cannot

exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv) The underlying index or portfolio must include a minimum of 13 stocks; and

(v) All securities in an underlying index or portfolio must be listed on Nasdaq (including The Nasdaq SmallCap Market) or another national securities exchange.

(B) Index Methodology and Calculation

(i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and

(iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time that Index Fund Shares trade on Nasdaq.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. NASD Regulation will implement written surveillance procedures for Index Fund Shares.

(4) Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by Nasdaq.

(5) Nasdaq may list and trade Index Fund Shares based on one or more foreign or domestic stock indexes or securities portfolios. Each issue of Index Fund Shares based on each particular stock index or portfolio shall be designated

as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(6) Each series of Index Fund Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing - for each series, Nasdaq will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing - following the initial twelve month period following commencement of trading on Nasdaq of a series of Index Fund Shares, Nasdaq will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

(i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of an open-end management investment company, Nasdaq requires that Index Fund Shares issued in connection with such entity be removed from listing.

(C) Voting - voting rights shall be as set forth in the applicable open-end management investment company prospectus.

(7) Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable

control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(k) Quantitative Listing Criteria - Preferred Stock and Secondary Classes of Common Stock

For initial listing, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or another national securities exchange, the issue shall have:

- (1) At least 200,000 publicly held shares;
- (2) A market value of publicly held shares of at least \$4,000,000;
- (3) A minimum bid price per share of \$5;
- (4) A minimum of 100 round lot shareholders;
- (5) At least three registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(l) Trust Issued Receipts

(1) Definition. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(2) Nasdaq requires that members provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(3) The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b)

received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(A) the component security must be listed on Nasdaq or another national securities exchange;

(B) the component security must be registered under Section 12 of the Act; and

(C) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

(4) Transactions in Trust Issued Receipts may be effected until 4:00 p.m. each business day.

(5) Nasdaq may trade, whether by listing or trading pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by Nasdaq or its agent, a wholly-owned subsidiary of Nasdaq, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(6) Trust Issued Receipts will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing - for each Trust, Nasdaq will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of the commencement of trading on Nasdaq.

(B) Continued Listing - following the initial twelve month period following formation of a Trust and commencement of trading on Nasdaq, Nasdaq will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and

outstanding is less than \$1 million; or

(iv) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of a Trust, Nasdaq requires that Trust Issued Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) Term - the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Trustee - the following requirements apply:

(i) the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) no change is to be made in the trustee of a listed issue without prior notice to and approval of Nasdaq.

(E) Voting - voting rights shall be as set forth in the Trust prospectus.

(7) Unit of Trading- transactions in Trust Issued Receipts may only be made in round lots of 100 receipts or round lot multiples.

(8) Nasdaq may approve a series of Trust Issued Receipts for trading, whether by listing or trading pursuant to unlisted trading privileges, on Nasdaq pursuant to Rule 19b-4(e) under the Act, provided each of the component securities satisfies the following criteria:

(A) each component security must be registered under Section 12 of the Act;

(B) each component security must have a minimum public float of at least \$150 million;

(C) each component security must be listed on Nasdaq or another national securities exchange;

(D) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(E) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(F) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

(m) NASD Regulation

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 described in this Rule on behalf of Nasdaq. Functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 4420 are being performed by NASD Regulation on behalf of Nasdaq. Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with NASD Regulation to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

4430. Limited Partnership Rollup Listing Criteria

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

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

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

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

(B) limited partnership rollup transactions which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph (A), above, must limit total leverage to 70% of the appraised value of the assets;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the

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

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

(1) if the general partner(s):

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

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

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

(2) as to voting rights, if:

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

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

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

(ii) dissolve the entity;

(iii) remove the general partner, board of directors, trustee

or similar governing entity, and elect a new general partner, board of directors, trustee or similar governing entity; or

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

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

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

(3) as to transaction costs, if:

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

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

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

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

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

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

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

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

4440. Registration Standards

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

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

(2) subject to an exemption issued by the Commission that permits the listing of the security notwithstanding its failure to be registered pursuant to Section 12(b).

4450. Quantitative Maintenance Criteria

After listing as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e) (f), (g), (h) or (i) below to continue to remain listed on the Nasdaq National Market. A security maintaining its listing under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

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

(1) 750,000 shares publicly held;

(2) Market value of publicly held shares of \$5 million;

(3) The issuer has stockholders' equity of at least \$10 million;

(4) 400 shareholders of round lots; and

(5) Minimum bid price per share of \$1.

(6) At least two registered and active market makers.

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

(1) The issuer has:

(A) a market value of listed securities of \$50 million; or

(B) total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

(2) 1,100,000 shares publicly held;

(3) Market value of publicly held shares of \$15 million;

(4) Minimum bid price per share of \$1;

(5) 400 shareholders of round lots; and

(6) At least four registered and active market makers.

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

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

(d) Rights and Warrants

Common stock of issuer must continue to be listed on the Nasdaq National Market.

(e) Compliance Periods

(1) A failure to meet the continued listing requirement for market value of publicly held shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance.

Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days.

(2) A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period

by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period.

Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq shall consider the following four factors: (i) margin of compliance (the amount by which the price is above the \$1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above \$1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

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

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

(f) Bankruptcy and/or Liquidation

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

(g) American Depositary Receipts

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

(h) Quantitative Maintenance Criteria - Preferred Stock and Secondary Classes of Common Stock

For continued listing, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or another national securities exchange, the issue shall have:

- (1) At least 100,000 publicly held shares;
- (2) A market value of publicly held shares of at least \$1,000,000;
- (3) A minimum bid price per share of \$1;
- (4) A minimum of 100 round lot shareholders;
- (5) At least two registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not listed on either Nasdaq or another national securities exchange, the preferred stock and/or secondary class of common stock may be listed on Nasdaq so long as the security satisfies the listing criteria for common stock.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of the compliance period for bid price provided in Rule 4450(e)(2), it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for initial listing on the SmallCap Market set forth in Rule 4310(c) or Rule 4320(e), as applicable, other than the minimum bid price requirement. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a Nasdaq National Market issuer will be afforded the remainder any compliance period set forth in Rule 4310(c)(8)(D) or Rule 4320(e)(2)(E)(ii) as if the issuer had been listed on The Nasdaq SmallCap Market. The compliance periods afforded by this rule and any time spent in the hearing process will be deducted in determining the length of the remaining applicable compliance periods on The Nasdaq SmallCap Market.

4460. Reserved

4470. Reserved

4480. Termination Procedure

(a) Failure to maintain compliance with the provisions of Rules 4350, 4450, or 4360 will result in the termination of an issue's listing unless an exception is granted as provided in the Rule 4800 Series. Termination shall become effective in accordance with the procedures set forth in the Rule 4800 Series.

(b) An issuer may voluntarily terminate its listing upon written notice to Nasdaq and application to the Commission.

4500. ISSUER LISTING FEES

IM-4500-1 Waiver of Fees upon Application in Certain Merger Situations

Rules 4510(c)(2), 4510(d)(3), 4520(c)(3), 4530(b)(2), and 4540(b)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 4500 series. Pursuant to that authority, Nasdaq has determined to permit a Nasdaq issuer that completes a merger with another Nasdaq issuer during the first 90 days of a calendar year to apply for and receive a waiver for 75% of the annual fees assessed to the acquired Nasdaq issuer. Issuers must apply for the credit no later than June 30 of the year in which the merger occurred. Applications should be addressed to: Finance Department CCG Billing Operations, The Nasdaq Stock Market Inc., 9513 Key West Avenue, 4th Floor, Rockville Maryland, 20850.

IM-4500-2 Reserved

IM-4500-3 Waiver of Fees in Situations Involving the Dual Listing or Transfer of New York Stock Exchange ("NYSE") Listed Securities

Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(35), 4520(a)(34), 4520(b)(4), and 4520(c)(4) provide Nasdaq with the discretion to waive all or part of its listing fees prescribed in this Rule 4500 series. Nasdaq shall not charge entry fees, annual fees, or listing of additional shares fees under Rules 4510(a)-(d) and Rules 4520(a)-(c) for a one year period from the date of listing on Nasdaq for any NYSE listed security that dually lists on Nasdaq between January 12, 2004 and December 31, 2004. Nasdaq shall not charge entry fees under Rules 4510(a) and 4520(a) for any NYSE listed security that transfers its listing from the NYSE to Nasdaq between January 12, 2004 and December 31, 2004.

4510. The Nasdaq National Market

(a) Entry Fee

(1) An issuer that submits an application to list any class of its securities (not otherwise identified in this Rule 4500 series) on the Nasdaq National Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of listing on the Nasdaq National Market, except for \$5,000 which represents a non-refundable, application fee, and which must be submitted with the issuer's application.

Up to 30 million shares	\$100,000
30+ to 50 million shares	\$125,000
Over 50 million shares	\$150,000

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

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for listing on the Nasdaq National Market shall pay to Nasdaq an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

(4) An issuer that submits an application to list any class of rights on the Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to Nasdaq.

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

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

(7) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on another national securities exchange but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq National Market.

(8) The fees described in this Rule 4510(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) Additional Shares

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

(2) The fee in connection with additional shares shall be \$2,500 or \$.01 per additional share, whichever is higher, up to an annual maximum of \$45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

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

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

(5) The fees described in this Rule 4510(b) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee - Domestic and Foreign Issues

(1) The issuer of each class of securities (not otherwise identified in this Rule 4500 Series) that is a domestic or foreign issue listed on the Nasdaq National Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares	\$24,500
10+ to 25 million shares	\$30,500
25+ to 50 million shares	\$34,500
50+ to 75 million shares	\$44,500
75+ to 100 million shares	\$61,750
Over 100 million shares	\$75,000

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

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

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

(5) In lieu of the fees described in Rule 4510(c)(1), the annual fee shall be \$15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq.

(d) Annual Fee - American Depositary Receipts (ADRs) and Closed-End Funds

(1) The issuer of each class of securities that is an ADR listed on The Nasdaq National Market shall pay to Nasdaq an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

Up to 10 million ADRs	\$21,225
10+ to 25 million ADRs	\$26,500
25+ to 50 million ADRs	\$29,820
Over 50 million ADRs	\$30,000

(2) ADRs outstanding means the aggregate of all classes of ADRs listed on the Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

(3) A Closed-End Fund listed on the Nasdaq National Market shall pay to Nasdaq an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	\$17,500
10+ to 25 million shares	\$20,000
25+ to 50 million shares	\$22,500
50+ to 100 million shares	\$30,000
100+ to 250 million shares	\$50,000
Over 250 million shares	\$75,000

(4) For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq National Market and the Nasdaq SmallCap Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

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

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

(e) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to Nasdaq.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

(1) An issuer that submits an application to list any class of its securities (not otherwise identified in this Rule 4500 series) on the Nasdaq SmallCap Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry on the Nasdaq SmallCap Market, except for a non-refundable, application fee of \$5,000, which must be submitted with the issuer's application.

Up to 5 million shares	\$25,000
5+ to 10 million shares	\$35,000
10+ to 15 million shares	\$45,000
Over 15 million shares	\$50,000

(2) An issuer that submits an application to list any class of convertible debentures on the Nasdaq SmallCap Market, shall pay to Nasdaq a non-refundable application fee of \$5,000 and a fee of \$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a “Closed-End Fund”), that submits an application for listing on the Nasdaq SmallCap Market shall pay to Nasdaq an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

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

(5) Total shares outstanding means the aggregate of all classes of equity securities to be listed on the Nasdaq SmallCap Market as shown in the issuer’s most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer’s appropriate regulatory authority.

(6) An issuer that submits an application to list any class of rights on the Nasdaq SmallCap Market, shall pay, at the time of its application, a non-refundable application fee to Nasdaq of \$1,000.

(7) The fees described in this Rule 4520(a) shall not be applicable with respect to any securities that (i) are listed on another national securities exchange but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq SmallCap Market.

(8) The fees described in this Rule 4520(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) Additional Shares

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

(2) The fee in connection with additional shares shall be \$2,500 or \$.01 per additional share, whichever is higher, up to an annual maximum of \$45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

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

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

(5) The fees described in this Rule 4520(b) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee

(1) The issuer of each class of securities that is a domestic or foreign issue, including American Depositary Receipts (ADRs), listed on the Nasdaq SmallCap Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares	\$17,500
Over 10 million shares	\$21,000

(2) Notwithstanding paragraph (1), the issuer of each class of convertible debentures listed on the Nasdaq SmallCap Market shall pay to Nasdaq an annual fee of \$500 or \$25 per million dollars face amount of debentures outstanding, whichever is higher.

(3) Notwithstanding paragraph (1), a Closed-End Fund listed on the Nasdaq SmallCap Market shall pay to Nasdaq an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares	\$17,500
10+ to 25 million shares	\$20,000
25+ to 50 million shares	\$22,500
50+ to 100 million shares	\$30,000
100+ to 250 million shares	\$50,000
Over 250 million shares	\$75,000

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

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

(6) Total shares outstanding means the aggregate of all classes of equity

securities listed on the Nasdaq SmallCap Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(7) Notwithstanding paragraph (6), for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq National Market and the Nasdaq SmallCap Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) In lieu of the fees described in Rule 4510(c)(1), the annual fee shall be \$15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq.

(d) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to Nasdaq.

IM-4520-1. Foreign Exempt Securities

Rules 4520(b)(4) and 4520(c)(4) provide Nasdaq with the discretion to waive all or part of the additional share and annual listing fees otherwise due. Pursuant to that authority, Nasdaq has determined to waive any additional share or annual fee that otherwise would be due from any foreign issuer whose securities or underlying ADRs were exempt from registration under Section 12(g) of the Act pursuant to SEC Rule 12g3-2(b) prior to Nasdaq's registration as a national securities exchange and whose securities are also subject to an exemption issued by the Commission that permits the listing the security notwithstanding its failure to be registered pursuant to Section 12(b).

4530. Other Securities

(a) Application Fee and Entry Fee

(1) When an issuer submits an application to list any Other Security or SEEDS on the Nasdaq National Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of \$1,000.

(2) When an issuer submits an application to list any Other Security or SEEDS on the Nasdaq National Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares	\$5,000
1+ to 2 million shares	\$10,000
2+ to 3 million shares	\$15,000
3+ to 4 million shares	\$17,500
4+ to 5 million shares	\$20,000
5+ to 6 million shares	\$22,500
6+ to 7 million shares	\$25,000
7+ to 8 million shares	\$27,500
8+ to 9 million shares	\$30,000
9+ to 10 million shares	\$32,500
10+ to 15 million shares	\$37,500
Over 15 million shares	\$45,000

The applicable Entry Fee shall be reduced by any Entry Fees paid previously in connection with the initial listing during the current calendar year of any of the issuer's Other Securities and SEEDS on the Nasdaq National Market.

(3) For the sole purpose of determining the Entry Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be listed on the Nasdaq National Market in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the Application Fee or Entry Fee prescribed herein.

(5) If the application is withdrawn or is not approved, the Entry Fee shall be refunded.

(b) Annual Fee

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on the Nasdaq National Market shall pay to Nasdaq an Annual Fee calculated based on total shares outstanding according to the

following schedule:

Up to 5 million shares	\$15,000
5+ to 10 million shares.....	\$17,500
10+ to 25 million shares	\$20,000
25+ to 50 million shares	\$22,500
Over 50 million shares	\$30,000

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

(3) For the sole purpose of determining the Annual Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer listed on the Nasdaq National Market, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

4540. Portfolio Depository Receipts and Index Fund Shares

(a) Entry Fee

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares on the Nasdaq National Market, it shall pay to Nasdaq a listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee).

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

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

(b) Annual Fee

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq National Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares	\$6,500
1+ to 2 million shares	\$7,000
2+ to 3 million shares	\$7,500
3+ to 4 million shares	\$8,000
4+ to 5 million shares	\$8,500
5+ to 6 million shares	\$9,000
6+ to 7 million shares	\$9,500
7+ to 8 million shares	\$10,000

8+ to 9 million shares	\$10,500
9+ to 10 million shares	\$11,000
10+ to 11 million shares	\$11,500
11+ to 12 million shares	\$12,000
12+ to 13 million shares	\$12,500
13+ to 14 million shares	\$13,000
14+ to 15 million shares	\$13,500
15+ to 16 million shares	\$14,000
Over 16 million shares	\$14,500

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be listed on The Nasdaq National Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

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

4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on the Nasdaq SmallCap Market or the Nasdaq National Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to Nasdaq a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b) Notwithstanding paragraph (a), an issuer may request a written interpretation of the Rules contained in the 4000 through 4500 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the issuer must submit to Nasdaq a non-refundable fee of \$10,000.

(c) An applicant to Nasdaq that has submitted the applicable entry fee under Rule 4510 or Rule 4520 will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on Nasdaq. In addition, an issuer is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2).

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

(e) Nasdaq shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

4600. REQUIREMENTS FOR NASDAQ MARKET MAKERS AND OTHER NASDAQ MARKET CENTER PARTICIPANTS

4601. Scope

Unless otherwise specified, the rules set forth in this 4600 Series apply only to the quoting and trading of Nasdaq securities via the Nasdaq Market Center. Participation in the Nasdaq Market Center as an ITS/CAES Market Maker shall be conditioned upon the initial and continuing compliance with the requirements set forth in the Rule 5200 Series. Participation in the Nasdaq Market Center as a UTP Exchange shall be conditioned upon the UTP Exchange's initial and continuing compliance with the requirements set forth in Nasdaq Rule 4710(e). Terms used in the Rule 4600 Series shall have the meaning as defined in Rule 4701.

4610. Registration and Other Requirements

4611. Nasdaq Market Center Participant Registration

(a) Participation in the Nasdaq Market Center as a Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm requires current registration as such with Nasdaq. Such registration shall be conditioned upon the participant's initial and continuing compliance with the following requirements:

- (1) execution of applicable agreements with Nasdaq;
- (2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which Nasdaq Market Center compared trades may be settled;
- (3) compliance with all applicable rules and operating procedures of Nasdaq and the Commission;
- (4) maintenance of the physical security of the equipment located on the premises of the Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Nasdaq Market Center; and
- (5) acceptance and settlement of each Nasdaq Market Center trade that the Nasdaq Market Center identifies as having been effected by such participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Nasdaq Market Center trade by the clearing member on the regularly scheduled settlement date.

A member's registration shall become effective upon receipt by the member of notice of an approval of registration by Nasdaq.

(b) Each Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm shall be under a continuing obligation to inform Nasdaq of noncompliance with any of the registration requirements set forth above.

(c) Nasdaq may impose upon any Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as Nasdaq may determine to be necessary to protect the integrity of Nasdaq's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm or at Nasdaq, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm in writing.

4612. Registration as a Nasdaq Market Maker

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

(b) A Nasdaq Market Maker may become registered in an issue by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems or by contacting Nasdaq Market Operations. Registration shall become effective on the day the registration request is entered.

(c) A Nasdaq Market Maker's registration in an issue shall be terminated by Nasdaq if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

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

4613. Character of Quotations

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Nasdaq Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MPID") and is displayed in the Nasdaq Market Center at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a Nasdaq-listed security must

display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1-4, provided, however, that a registered Nasdaq Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares.

(B) Minimum Price Variation for Decimal-based Quotations- The minimum quotation increment for Nasdaq securities authorized for decimal pricing shall be \$0.01. Quotations failing to meet this standard shall be rejected.

(2) The first MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary MPID." For a six-month pilot period ending November 30, 2005, market makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." Nasdaq Market Makers and Nasdaq ECNs may be issued up to nine Supplemental MPIDs. A market maker may request the use of a Supplemental MPID for displaying Attributable Quotes/Orders in the Nasdaq Market Center for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. A Nasdaq ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Market Center for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use the a Supplemental MPID for any purpose in that security.

(3) Nasdaq Market Makers and Nasdaq ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' Supplemental MPIDs; and (b) the Supplemental MPID may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to Nasdaq Rules 4614 and 4619.

(b) Firm Quotations

(1) A Nasdaq Market Maker that receives an offer to buy or sell from another member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in the Nasdaq Market Center at the time of receipt of any such offer. If a Nasdaq Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member, execute a transaction at least at the size displayed.

(2) If a Nasdaq Market Maker, upon receipt of an offer to buy or sell from another member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated in the Nasdaq Market Center at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such market maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Nasdaq Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (c) of this rule.

(c) Quotations Reasonably Related to the Market

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

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

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

(d) Reserved

(e) Locked and Crossed Markets

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

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another Nasdaq Market Maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another Nasdaq Market Maker entering quotations in the same security.

(2) A Nasdaq Market Maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or

crossed market by executing transactions with all Nasdaq Market Makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule, a Nasdaq Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

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

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

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

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

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

IM-4613. Procedures For Allocation of Second Displayable MPIDs

Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security, although it has not reached that maximum to date in any security. Therefore, Nasdaq must consider the issuance and display of Supplemental MPIDs to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental MPIDs with attributable display privileges (“display privileges”) in an orderly, predictable, and fair manner on a stock-by-stock basis.

As described in Rule 4613, Nasdaq will automatically designate a Nasdaq Market Maker’s first MPID as a “Primary MPID” and any additional MPIDs as “Supplemental MPIDs.” Market makers are required to use their Primary MPID in accordance with the requirements of Nasdaq Rule 4613(a)(1) above, as well as all existing requirements for the use of MPIDs in Nasdaq systems. Nasdaq Market Makers’ use of Supplemental MPIDs is subject to the requirements set forth in Nasdaq Rule 4613(a)(2) and (a)(3) above, including the prohibition on passive market making. However, the two-sided quote requirement, and the excused withdrawal procedures under Nasdaq Rule 4619, and 4710(b)(2)(B) and (b)(5) will not apply to the Supplemental MPIDs. Nasdaq will automatically designate each Nasdaq ECN’s MPIDs as Primary and Supplemental. Each Nasdaq ECN MPID will be subject to the requirements of Nasdaq Rule 4623 and the

existing Nasdaq ECN requirements of the Nasdaq Rule 4700 Series. Members may also use a Supplemental MPIDs to enter non-attributable orders into SIZE.

Nasdaq has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to members' use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if a market maker or ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.

The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental MPIDs is that each Nasdaq Market Maker or Nasdaq ECN should be permitted to register to display a single quotation in a security under its a Primary MPID before any is permitted to register to display a second quotation under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental MPIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for members that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to members requesting Primary MPIDs and then receives additional requests for Primary MPIDs, it will use the procedure described below to re-allocate display privileges to members requesting Primary MPIDs.

For any stock in which Nasdaq has reached the maximum number of members registered to display quotations, once each month, Nasdaq will rank each of the market participants that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that participant's least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental MPID of the participant in that ranking and assign that privilege to the first member that requested a Primary MPID or Supplemental MPID, with Primary MPIDs always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental MPIDs. If after following this process (or at the outset of the allocation process) no member has more than one Supplemental MPID with display privileges, members will be ranked based upon the volume associated with their Supplemental MPID, and Nasdaq will withdraw the display privilege from the member with the lowest volume Supplemental MPID.

Members that lose the display privilege associated with a Supplemental MPID will still be permitted to use the Supplemental MPID to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in any stocks in

which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.

The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MPIDs to those members requesting Primary or Supplemental MPIDs. For example, assume with respect to security WXYZ member A has nine Supplemental MPIDs with display privileges (which is the maximum - 1 Primary MPID + 9 Supplemental MPIDs = 10 MPIDs with display privileges), member B has three Supplemental MPIDs with display privileges, and member C has three Supplemental MPIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MPIDs is the least used in WXYZ, C has the next lowest volume Supplemental MPID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MPIDs in WXYZ, C adds a Supplemental MPID with display privileges in the security, and B loses a display privilege in WXYZ - B does not lose use of the Supplemental MPID for submitting non-attributable orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MPID.

4614. Stabilizing Bids

(a) Nasdaq Market Maker and ITS/CAES Market Maker Obligation/Identifier

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

(b) Eligibility

Only one Nasdaq Market Maker or ITS/CAES Market Maker in a security may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids

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

(2) A stabilizing bid must be available for all freely tradable outstanding

securities of the same class being offered.

(d) Submission of Request to Nasdaq

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

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

(A) the identity of the security and its symbol;

(B) the contemplated effective date of the offering and the date when the offering will be priced;

(C) the date and time that an identifier should be included on Nasdaq; and

(D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless Nasdaq determines otherwise.

4615. Reserved

4616. Reports

A Nasdaq Market Maker, Nasdaq ECN, Order Entry Firm or ITS/CAES Market Maker shall make such reports to Nasdaq as may be prescribed from time to time by Nasdaq.

4617. Normal Business Hours

A Nasdaq Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. Should a Nasdaq Market Maker wish to voluntarily remain open for business later than 4:00 p.m. Eastern Time, it shall so notify Nasdaq Market Operations and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time. Nasdaq Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all Nasdaq Rules that are not by their express terms, or by an official interpretation of Nasdaq, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618. Clearance and Settlement

(a) All transactions through the facilities of the Nasdaq Market Center shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

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

4619. Withdrawal of Quotations and Passive Market Making

(a) Except as provided in paragraph (b) of this Rule, a market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq MarketWatch only upon satisfying one of the conditions specified in this Rule.

(b) A Nasdaq Market Maker that wishes to obtain excused withdrawal status based on a market maker’s systemic equipment problems, such as defects in a Nasdaq Market Maker’s software or hardware systems or connectivity problems associated with the circuits connecting Nasdaq Market Center systems with the Nasdaq Market Maker’s systems, shall contact Nasdaq Market Operations. Nasdaq Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Nasdaq Market Operations.

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

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

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

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

(d) Excused withdrawal status may be granted to a Nasdaq Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq Market Center, thereby terminating its registration as a Nasdaq Market Maker. Provided however, that if Nasdaq finds that the Nasdaq Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and the Rule 4700 Series governing the Nasdaq Market Center. Nasdaq Market Makers that fail to maintain a clearing relationship will have their Nasdaq Market Center system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

(e) Excused withdrawal status or passive market maker status may be granted to a Nasdaq Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq MarketWatch and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Nasdaq Market Maker's quotations, or that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Nasdaq Market

Maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq MarketWatch and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq MarketWatch as required by subparagraph (e)(2), below.

(2) A Nasdaq Market Maker that has been identified to Nasdaq MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq MarketWatch and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a Nasdaq Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit Nasdaq from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

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

(5) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1) of this Rule shall submit a request to Nasdaq MarketWatch and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

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

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the Nasdaq Market Center. A Nasdaq Market

Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a Nasdaq Market Maker in the Nasdaq Market Center shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Nasdaq Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Nasdaq Market Center and thereby terminates its registration as a Nasdaq Market Maker may register as a market maker at any time after a clearing arrangement has been reestablished unless Nasdaq finds that the Nasdaq Market Maker's failure to maintain a clearing arrangement is voluntary, in which case the withdrawal of quotations will be considered voluntary and unexcused.

(b) Notwithstanding the above, a Nasdaq Market Maker that accidentally withdraws as a Nasdaq Market Maker may be reinstated if:

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

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

(3) the Nasdaq Market Maker's firm would not exceed the following reinstatement limitations:

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

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

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

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

(1) the number of accidental withdrawals by the Nasdaq Market Maker in the past, as compared with Nasdaq Market Makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the Nasdaq Market Maker intended to withdraw from and the symbol of the stock that the Nasdaq Market Maker actually withdrew from;

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

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

(5) the timeliness with which the Nasdaq Market Maker notified MarketWatch of the error.

(d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq Market Center if the Nasdaq Market Maker's two-sided quotation in the subject security is withdrawn by Nasdaq's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the Nasdaq Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;

(2) the Nasdaq Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Nasdaq Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, Nasdaq MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

4621. Suspension and Termination of Quotations

Nasdaq may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate the authority of a Nasdaq Market Maker, Nasdaq ECN, Order Entry Firm or ITS/CAES Market Maker to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622. Termination of Nasdaq Service

Nasdaq may, upon notice, terminate Nasdaq service in the event that a Nasdaq Market Maker, Nasdaq ECN, Order Entry Firm or ITS/CAES Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by Nasdaq.

4623. Alternative Trading Systems

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

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

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

(3) to provide orders to Nasdaq voluntarily.

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

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

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

(2) be registered as a Nasdaq member;

(3) enter into and comply with the terms of applicable agreements with Nasdaq;

(4) agree to provide for Nasdaq’s dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber’s order in Nasdaq), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ATS or ECN;

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

(6) not charge to broker-dealers that access the ATS or ECN through the Nasdaq Market Center any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) or that exceeds \$0.003 per share.

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

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

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

No ATS or ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

Nothing in this Rule shall require the provision to Nasdaq of a locking or crossing bid or offer, if such locking or crossing bid or offer is instead provided to another display alternative operated by a national securities exchange or national securities association.

4624. Penalty Bids and Syndicate Covering Transactions

(a) A Nasdaq Market Maker or ITS/CAES Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A Nasdaq Market Maker or ITS/CAES Market Maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

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

(1) the identity of the security and its symbol;

(2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

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

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

4625. Obligation to Provide Information

(a) A Nasdaq Market Maker, Nasdaq ECN, Order Entry Firm or ITS/CAES Market Maker operating in or participating in the Nasdaq Market Center or other Nasdaq-operated system shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

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

(A) a locked or crossed market; or

(B) Reserved

(C) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Nasdaq Rule 4120 and IM-4120-1; or

(D) a quotation that appears not to be reasonably related to the prevailing market; or

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

(F) a request for an excused withdrawal or reinstatement, pursuant to Nasdaq Rules 4619, 4620, and 5222; or

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

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

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

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

4626. Limitation of Liability

(a) Except as provided for in paragraph (b) below, Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center or Nasdaq's Brut order execution system for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center, or Brut system, as applicable, has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of \$100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.

(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system during a single calendar month, Nasdaq's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(4) In the event all of the claims arising out of the use of the Nasdaq Market Center or Brut system cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising on a single trading day, or during a single calendar month, as applicable.

(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Nasdaq Market Center or the Brut system gave rise to such claims. Nothing in this rule shall obligate Nasdaq or Brut to seek recovery under any applicable insurance policy.

4700. NASDAQ MARKET CENTER - EXECUTION SERVICES

4701. Definitions

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

(a) The term “active Nasdaq Market Center securities” shall mean those Nasdaq Market Center eligible securities in which at least one Nasdaq Market Maker or ITS/CAES Market Maker is currently active in the Nasdaq Market Center, or at least one other exchange or the NASD’s Alternative Display Facility is actively quoting the security and Nasdaq has access to the quotes of these markets under Rule 4714. A security will not be considered an “active Nasdaq Market Center security” when trading on Nasdaq has been halted pursuant to Rule 4120 and the interpretations thereunder.

(b) Reserved

(c) The term “Attributable Quote/Order” shall have the following meaning:

(1) For Nasdaq Market Makers and Nasdaq ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant’s MPID in the Nasdaq Market Center once such Quote/Order becomes the participant’s best attributable bid or offer.

(2) For ITS/CAES Market Makers, a bid or offer Quote/Order that is designated for display (price and size) next to the participant’s MPID once such Quote/Order becomes the participant’s best attributable bid or offer.

(3) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange’s MPID in the Nasdaq Market Center.

(d) Reserved

(e) The term “automatic refresh size” shall mean the default size to which a Nasdaq Market Maker’s or ITS/CAES Market Maker’s quote will be refreshed pursuant to Nasdaq Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.

(f) Reserved

(g) The term “Displayed Quote/Order” shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants or Order Entry Firms. Order Entry Firms are not permitted to enter Displayed Quotes/Orders in ITS Securities.

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

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

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

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

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

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

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

(o) The term “Non-Attributable Quote/Order” shall mean:

(1) for orders in Nasdaq-listed securities, a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or Order Entry Firm and is designated for display (price and size) on an anonymous basis in the order display service of the Nasdaq Market Center. UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).

- (2) for orders in ITS Securities, a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis in the Nasdaq Market Center. Order Entry Firms shall be eligible to enter Non-Attributable Orders in ITS Securities only if they are designated as Immediate or Cancel.
- (p) The term “Nasdaq Market Center Order” shall mean an order that is entered into the system by a Nasdaq Market Center Participant, or ITS Exchange.
- (q) Reserved
- (r) The term “Nasdaq Market Center,” or “system” shall mean the system for order execution and automated trade reporting owned and operated by The NASDAQ Stock Market LLC.
- (s) The term “Nasdaq Market Center eligible securities” shall mean designated Nasdaq-listed equity securities and ITS Securities as that term is defined in Nasdaq Rule 5210(c).
- (t) The term “Nasdaq ECN” shall mean a member of Nasdaq that meets all of the requirements of Nasdaq Rule 4623, and that participates in the Nasdaq Market Center with respect to one or more Nasdaq-listed securities.
- (1) The term “Nasdaq Auto-Ex ECN” shall mean a Nasdaq ECN that participates in the automatic-execution functionality of the Nasdaq Market Center system, and accordingly executes Nasdaq Market Center Orders via automatic execution for the purchase or sale of an active Nasdaq-listed security at the Nasdaq inside bid and/or offer price.
- (2) The term “Nasdaq Order-Delivery ECN” shall mean a Nasdaq ECN that participates in the order-delivery functionality of the Nasdaq Market Center system, accepts delivery of Nasdaq Market Center Orders that are Liability Orders, and provides an automated execution of Nasdaq Market Center Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active Nasdaq-listed security at the Nasdaq inside bid and/or offer price.
- (u) The term “Nasdaq Market Maker” with respect to participation in the Nasdaq Market Center system shall mean a member of Nasdaq that is registered as a Nasdaq Market Maker for purposes of participation in the Nasdaq Market Center with respect to one or more Nasdaq-listed eligible securities, and is currently active in the Nasdaq Market Center and obligated to execute orders through the automatic-execution functionality of the Nasdaq Market Center system for the purchase or sale of an active Nasdaq-listed security at the Nasdaq inside bid and/or offer price.
- (v) The term “Nasdaq Market Center Participant” shall mean a Nasdaq Market Maker, Nasdaq ECN, UTP Exchange, ITS/CAES Market Maker, or Order Entry Firm registered as such with Nasdaq for participation in the Nasdaq Market Center.

(w) The term “Order Entry Firm” shall mean a member of Nasdaq who is registered as an Order Entry Firm for purposes of entering orders in active Nasdaq Market Center securities into the Nasdaq Market Center. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. Order Entry Firms shall not charge any fee to a broker-dealer that accesses the Order Entry Firm’s Quote/Order through the Nasdaq Market Center.

(x) Reserved.

(y) The term “Nasdaq Quoting Market Participant” shall include only the following: (1) Nasdaq Market Makers; (2) Nasdaq ECNs and (3) ITS/CAES Market Makers.

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

(aa) Reserved

(bb) The term “Quote/Order” shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to the Nasdaq Market Center by a Nasdaq Quoting Market Participant or Order Entry Firm that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange’s agency Quote/Order (as set out in Rule 4710(e)(2)(B)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term “Quoting Market Participant” shall include any of the following: (1) Nasdaq Market Makers; (2) Nasdaq ECNs; (3) UTP Exchange specialists, and ITS/CAES Market Makers.

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

(ee) Reserved.

(ff) The term “UTP Exchange” shall mean any registered national securities exchange that elects to participate in the Nasdaq Market Center and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (“Nasdaq UTP Plan”).

(gg) The term “Legacy Quote” shall mean the quotation mechanism that existed

in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the Nasdaq Market Center.

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

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

(jj) The term “End-of-Day” shall mean, for orders so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until market close (4:00 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party. End-of-Day orders shall not be available for ITS Securities.

(kk) The term “Auto-Ex” shall mean, for orders in Nasdaq-listed securities so designated, an order that (except when it is displayed or interacts with a displayed Discretionary Order at a price in its discretionary price range) will execute solely against the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center. An Auto-Ex Order may be designated as “Immediate or Cancel” (an “IOC Auto-Ex Order”) or “Day” or “GTC” (a “Postable Auto-Ex Order”). A party entering a Postable Auto-Ex Order may (but is not required to) specify that the order will utilize the functionality associated with Discretionary Orders. Auto-Ex Orders shall not be eligible for routing as set out in Rule 4714.

(ll) The term “Fill or Return” shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by Nasdaq Market Center Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges. Fill or Return Orders shall not be eligible for routing as set out in Rule 4714.

(mm) The term “Pegged” shall mean, for priced limit orders so designated, that after entry into the Nasdaq Market Center, the price of the order is automatically adjusted by Nasdaq Market Center in response to changes in the Nasdaq Market Center inside bid or offer, as appropriate. The Nasdaq Market Center Participant entering a Pegged Order may specify that the price of the order will either equal the inside quote on the same side of the market (a “Regular Pegged Order”) or equal a price that deviates from the inside quote on the contra side of the market by \$0.01 (i.e., \$0.01 less than the inside offer or \$0.01 more than the inside bid) (a “Reverse Pegged Order”). The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price

at which pegging of the order will stop and the order will be permanently converted into an unpegged limit order. Pegged Orders shall not be available for ITS Securities. Pegged Orders shall not be eligible for routing as set out in Rule 4714.

(nn) The term “Discretionary” shall mean;

(1) for priced limit orders in Nasdaq-listed securities so designated, an order that when entered into the Nasdaq Market Center has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to equal the inside quote on the same side of the market. The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted to follow the pegged displayed price. Discretionary Orders for Nasdaq-listed securities shall be eligible for routing as set out in Rule 4714.

(2) for orders in ITS Securities so designated, an order that when entered into the Nasdaq Market Center has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an ITS Security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order. Discretionary Orders for ITS Securities shall not be eligible for routing as set out in Rule 4714.

(oo) The term “Summary” shall mean, for priced limit orders so designated, that if an order is marketable upon receipt by the Nasdaq Market Center, it shall be rejected and returned to the entering party. Summary Orders may only be entered by Nasdaq Order-Delivery ECNs. Summary Orders shall not be eligible for routing as set out in Rule 4714.

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

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

and all applicable Nasdaq rules.

(rr) The term “Sweep Order” shall mean, for orders in ITS Securities so designated, an order that may be delivered to or executed by Nasdaq Market Center Participants at multiple price levels. Sweep Orders shall not be eligible for routing as set out in Rule 4714.

(ss) The term “Total Day” or “X Order” shall mean,

(a) For orders in ITS Securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open (9:30 a.m.) and 6:30 p.m., after which it shall be returned to the entering party.

(b) For orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 4:00 p.m. and for execution between 8:00 a.m. and 4:00 p.m., after which it shall be returned to the entering party.

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

(uu) The term “Total Immediate or Cancel” or “IOX Order” shall mean,

(a) For limit orders in ITS Securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders are available for potential execution between 9:30 a.m. and 6:30 p.m.

(b) For limit orders in Nasdaq-listed securities so designated, that if after entry into the Nasdaq Market Center a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders may be entered and are available for potential execution between 8:00 a.m. and 4:00 p.m.

4704. Opening Process For Nasdaq-Listed Securities

(a) **Definitions.** For the purposes of this rule the term:

(1) “Imbalance” shall mean the number of shares of buy or sell MOO, LOO or Early Regular Hours orders that may not be matched with other MOO,

LOO, Early Regular Hours or OIO order shares at a particular price at any given time.

(2) The Order Imbalance Indicator shall disseminate three prices, defined as follows:

(A) “Inside Match Price” shall mean:

(i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO and Early Regular Hours orders can be paired.

(ii) If more than one price exists under subparagraph a, the Inside Match Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph b, the Inside Match Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.

(B) “Near Clearing Price” shall mean the price at which both the MOO, LOO, OIO, and Early Regular Hours orders and all executable quotes and orders in the Nasdaq Market Center (excluding volume that is available only by order delivery) would execute.

(C) “Far Clearing Price” shall mean the price at which the MOO, LOO, OIO, and Early Regular Hours orders in the Nasdaq Opening Book would execute.

(3) (A) “Limit On Open Order” or “LOO” shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Opening Cross. LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution. LOO orders may be entered, cancelled and corrected between 7:30 a.m. and 9:28 a.m. without restriction.

(B) LOO orders entered after 9:28 a.m. shall be price validated as follows:

(i) In the case of a sell imbalance, sell orders shall be priced no lower than the Near Clearing Price or they shall be rejected. Buy orders shall be priced no higher than the Inside Match Price or they shall be rejected.

(ii) In the case of a buy imbalance, buy orders shall be priced no higher than the Near Clearing Price or they shall be

rejected. Sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.

(iii) If there is no imbalance, buy orders shall be priced no higher than the Inside Match Price and sell orders shall be priced no lower than the Inside Match Price or they shall be rejected.

(C) After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available. Modifications to improve the price or number of shares of an existing LOO order shall pass the price validation in Rule 4704 (a)(3)(B) or the modification shall be rejected.

(D) LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution.

(E) LOO orders may not be cancelled or corrected after 9:28. After 9:28 a.m., LOO orders may only be modified to improve their price or increase the number of shares available.

(4) “Market on Open Order” or “MOO” shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Opening Cross. MOO orders may be entered, cancelled, and corrected between 7:30 a.m. and 9:28 a.m. and shall execute only at the price determined by the Nasdaq Opening Cross. All MOO orders shall be available for automatic execution.

(5) “Nasdaq Opening Cross” shall mean the process for determining the price at which orders shall be executed at the open and for executing those orders.

(6) “Opening Imbalance Only Order” or “OIO” shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Opening Cross and only against MOO, LOO or Regular Hours orders. OIO orders may be entered between 7:30 a.m. and 9:29:59 p.m., but they may not be cancelled or modified after 9:28 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. OIO sell (buy) orders shall only execute at or above (below) the 9:30 Nasdaq Market Center offer (bid). All OIO orders shall be available for automatic execution.

(7) “Order Imbalance Indicator” shall mean a message disseminated by electronic means containing information about MOO, LOO, OIO, and Early Regular Hours orders and the price at which those orders would execute at the time of dissemination.

(8) “Regular Hours Orders” shall mean any order that may be entered into the system and designated with a time-in-force of IOC, DAY, or GTC. Regular Hours Orders shall be available for execution only during the opening and then during normal trading hours. Regular Hours Orders shall be designated as “Early Regular Hours Orders” if entered into the system prior to 9:28 a.m. and

designated as “Late Regular Hours Orders” if entered into the system at 9:28 a.m. or after. Beginning at 9:28 a.m., requests to cancel or modify Regular Hours Orders shall be suspended until after completion of the Opening Cross at which time such requests shall be processed, to the extent that such orders remain available within the system.

(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes in Nasdaq-listed securities at 8:00 a.m. in the following manner to prevent the creation of locked/crossed markets.

(1) At 8:00 a.m., the system shall open in time priority all eligible Quotes as stated in paragraph (5) below and all eligible Orders in accordance with Rule 4701(ss) and (uu). Quotes/Orders whose limit price would not lock or cross the book shall be added to the book in strict time priority. Quotes/Orders whose limit price would lock or cross the book shall be placed in an “In Queue” state except as provided in paragraph (4).

(2) Next, the system shall begin processing the In Queue Quotes/Orders in strict time priority against the best bid (ask) if the In Queue Quote/Order is a sell (buy) order. If an In Queue Quote/Order is not executable when it is next in time for execution, the system shall automatically add that Quote/Order to the book.

(3) Once the process set forth in subparagraphs (1) - (2) is complete, the system shall begin processing Quotes and X and IOX Orders in accordance with their entry parameters.

(4) Between 8:00 a.m. and 9:25 a.m., the system shall open Quotes in accordance with the entry parameters set by each Nasdaq Quoting Market Participant provided that Quotes that would lock/cross the market will be rejected or executed in accordance with the Nasdaq Quoting Market Participant's instructions. At 9:25 a.m., the system shall open all remaining unopened Quotes in accordance with each firm's instructions.

(5) Nasdaq Quoting Market Participants may instruct Nasdaq to open their Quotes as follows:

(A) At the last price and size entered by the participant during the previous trading day, either including or excluding reserve size;

(B) At a price and size entered by the participant between 7:30 a.m. and 9:24:59 a.m.; or

(C) At the quotation limits for Nasdaq systems, currently \$.01 (bid) and \$2,000 (ask).

(6) All trades executed prior to 9:30 shall be automatically appended with the “.T” modifier.

(7) Notwithstanding subparagraphs (1) through (6), if a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described above, the Nasdaq Quoting Market Participant can use the anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a) to deviate from time priority. Order Entry Firms that enter locking/crossing Quotes/Orders also can use the anti-internalization qualifier as provided for in Rule 4710(b)(1)(B)(ii)(a) to deviate from time priority.

(c) Nasdaq-listed securities in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. or, in the case of Nasdaq-listed securities in which trading is halted pursuant to Rule 4120(a), at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:

(1) At 9:30 or at the time specified by Nasdaq pursuant to Rule 4120, the system shall suspend processing as set forth in Rule 4704(b) in order to open and integrate Regular Hours orders into the book in time priority; provided, however, that in the case of an Initial Public Offering halted pursuant to Rule 4120(a)(7), the Issuer’s Initial Public Offering Price shall be entered on the bid side of the market as the oldest quotation.

(2) Limit priced Regular Hours Orders whose limit price does not lock or cross the book shall be added to the book in time priority and limit priced Regular Hours Orders whose limit price does lock or cross the book shall be held In Queue in time priority along with IOC and Regular Hours market orders.

(3) In Queue Orders shall then be executed in strict time priority against the best bid (ask) if the In Queue order is a buy (sell) order. Non-marketable IOC orders shall be cancelled and non-marketable Regular Hours Orders shall be added to the book.

(4) When all In Queue orders have been processed, the system shall resume processing for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(d) Processing of Nasdaq Opening Cross. For certain Nasdaq-listed securities designated by Nasdaq, the Nasdaq Opening Cross shall occur at 9:30, and regular hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) Beginning at 9:25:30 a.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 15 seconds until 9:28:20, and then every 5 seconds until market open. The Order Imbalance Indicator shall contain the following real time information:

(A) the Inside Match Price;

(B) the number of shares represented by MOO, LOO, OIO, and Early Regular Hours orders that are paired at the Inside Match Price;

(C) the size of any Imbalance;

(D) the buy/sell direction of any Imbalance; and

(E) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

(i) The Far Clearing Price, and

(ii) The Near Clearing Price.

(iii) If no price satisfies subparagraph (i) or (ii) above, Nasdaq shall disseminate an indicator for “market buy” or “market sell”.

(2) (A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of MOO, LOO, OIO, Early Regular Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.

(B) If more than one price exists under subparagraph (A), the Nasdaq Opening Cross shall occur at the price that minimizes any Imbalance.

(C) If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.

(D) If the Nasdaq Opening Cross price established by subparagraphs (A) through (C) is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Opening Cross shall occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C). Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Opening Cross price is selected and fewer than all MOO, LOO, OIO and Regular Hours Orders that are available for automatic execution in the Nasdaq Market Center would be executed, all Quotes/Orders shall be executed at the Nasdaq Opening Cross price in the following priority:

(A) MOO and Early Regular Hours market orders, with time as the secondary priority;

(B) LOO orders, Early Regular Hours limit orders, OIO orders, X limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price with time as the secondary priority;

(C) LOO orders, OIO Orders, displayed interest of Early Regular Hours and X limit orders, and displayed interest of quotes at the Nasdaq Opening Cross price with time as the secondary priority;

(D) Reserve interest of quotes and Early Regular Hours and X limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and

(E) Eligible Late Regular Hours orders in strict time priority.

Unexecuted MOO, LOO, and OIO orders shall be canceled.

(4) All Quotes/Orders executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported with SIZE as the contra party, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Opening Cross.

4705. Hours of Operation.

(a) The Nasdaq Market Center operates in accordance with the following schedule for Nasdaq-listed securities:

Order/Quote Entry: 7:30 am, ET

Pre-Market Session: 8:00 am to 9:25 am, ET

Pre-Open Session: 9:25 am to 9:29:59 am, ET

Regular Market Hours: 9:30 am to 4:00 pm, ET

Post-Market Hours: 4:00 pm to 6:30 pm, ET

(b) The Nasdaq Market Center operates in accordance with the following schedule for ITS Securities:

Order/Quote [Entry](#) 7:30 am, ET

Regular Market Hours: 9:30 am to 4:00 pm, ET

Post-Market Hours: 4:00 pm to 6:30 pm, ET

4706. Order Entry Parameters

(a) Nasdaq Market Center Orders --

(1) General. The following requirements shall apply to Nasdaq Market Center Orders entered by Nasdaq Market Center Participants:

(A) A Nasdaq Market Center Participant may enter into the Nasdaq Market Center a Nasdaq Market Center Order in order to access the best bid/best offer as displayed in Nasdaq and other markets as set out in Rule 4714.

(B) A Nasdaq Market Center Order must be a market or limit order, must indicate whether it should be not routed to another market in accordance with Rule 4714, whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as “Immediate or Cancel”, “Day”, “Good-till-Cancelled”, “Auto-Ex”, “Fill or Return”, “Pegged”, “Discretionary”, “Sweep”, “Total Day”, “Total Good till Cancelled”, or “Total Immediate or Cancel,” or “Summary.”

(i) If a priced order designated as “Immediate or Cancel” (“IOC”) is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

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

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

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

(v) For Nasdaq-listed securities, an order may be designated as “Auto-Ex,” in which case the order may be designated as IOC, Day or GTC. If a Nasdaq Market Center Participant entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with Discretionary

Orders, the order will automatically be designated as Day.

(vi) for ITS Securities, an order may be designated as “Fill or Return,” in which case it shall be executed solely against the Quotes/Orders of Nasdaq Market Center Participants at the best bid/best offer within the Nasdaq Market Center. The Nasdaq Market Center will, if necessary, execute against interest at successive price levels. A Fill or Return Order will not trade through the quotation of an ITS Exchange.

(vii) An order may be designated as “Pegged,” in which case the order will also automatically be designated as Day. A Pegged Order (or unexecuted portion thereof) will be retained by the Nasdaq Market Center and its price adjusted in response to changes in the Nasdaq Market Center inside market. A Pegged Order (including a Discretionary Order that is pegged) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4:00 p.m. market close, Pegged Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of Pegged Orders (including Discretionary Orders that are pegged) entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer at that time. Pegged Orders shall not be available for ITS Securities.

To maintain the capacity and performance of the Nasdaq Market Center, Nasdaq may at any time suspend the entry of Pegged Orders (including Discretionary Orders that are pegged) for all securities or for any security. Pegged Orders that are in the Nasdaq Market Center at the time of such suspension will continue to be available for adjustment and execution.

(viii) a. An order may be designated as “Discretionary”, in which case the order will also automatically be designated as Day. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market. Starting at 7:30 a.m., until the 4:00 p.m. market close, Discretionary Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders

entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the Nasdaq Market Center at market open.

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

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

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

(xi) An order in an ITS Security may be designated as "Total Good-till-Cancelled" ("GTX"). A GTX order (or unexecuted portion thereof) shall be retained by the Nasdaq

Market Center and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m.

(xii) An order in an ITS Security may be designated as “Total Immediate or Cancel” (“IOX”). IOX orders may be entered beginning at 7:30 a.m. until 6:30 p.m. and are available for potential execution throughout the trading day beginning at 9:30 a.m. If a priced order designated as IOX and entered prior to 9:30 a.m. is not immediately executable at 9:30 a.m., the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as IOX and entered between 9:30 a.m. and 6:30 p.m. is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(xiii) An order may be designated as “Summary,” in which case the order shall be designated either as Day or GTC. A Summary Order that is marketable upon receipt by the Nasdaq Market Center shall be rejected and returned to the entering party. If not marketable upon receipt by the Nasdaq Market Center, it will be retained by the system. Summary Orders may only be entered by Nasdaq Order-Delivery ECNs.

(C) The system will not process a Nasdaq Market Center Order to sell short if the execution of such order would violate SEC Rule 10a-1, in the case of ITS Securities. Nasdaq Market Center Orders to sell short shall not be executed in the Nasdaq Market Center if the execution of such order would violate Nasdaq Rule 3350. Nasdaq Market Center Orders to sell short that cannot be executed in the Nasdaq Market Center and that have elected to be routed to other markets as set out in Rule 4714 shall be routed to another market and processed in accordance with the short sale restrictions in effect at the destination market.

(D) Nasdaq Market Center Orders will be processed as described in Rule 4710.

(E) The Nasdaq Market Center shall not accept Nasdaq Market Center Orders that are All-or-None, or have a minimum size of execution.

(F) A Nasdaq Market Center Participant may enter a Nasdaq Market Center Order that is either a market order or a limit order prior to the market’s open. Market orders and limit orders designated as Immediate or Cancel, limit orders designated as Total Immediate or Cancel, Auto-Ex Orders, and Discretionary Orders whose displayed price

or discretionary price range would lock or cross another Quote/Order if they were displayed shall be held in a time-priority queue that will begin to be processed by Nasdaq Market Center at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by Nasdaq Market Center for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

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

(A) (i) All Nasdaq Market Center Orders in Nasdaq-listed securities shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. Order Entry Firms may designate orders as “Pegged” or “Discretionary,” in which case the order will also automatically be designated as Day. Order Entry Firms may also designate orders as “Auto-Ex,” in which case the order may be designated as IOC, Day or GTC. If an Order Entry Firm entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with Discretionary Orders, the order will automatically be designated as Day. For IOC orders, if after entry into the Nasdaq Market Center of a Nasdaq Market Center Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant

(ii) In ITS Securities, all Nasdaq Market Center Orders shall be designated as Immediate or Cancel, GTC, Day, Total Immediate or Cancel, Total Day, or Total GTC but shall be required to be entered as Non-attributable if not entered as IOC or IOX. Order Entry Firms may only assign the IOC, IOX, and Fill or Return and Discretionary order designations described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the Nasdaq Market Center of a Nasdaq Market Center Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Nasdaq Market Center Order that is either a market or limit order may be entered prior to the market’s open. Limit and market orders designated as Immediate or Cancel or, in the case of ITS Securities, IOX, Auto-Ex Orders, and Discretionary Orders whose displayed price or

discretionary price range would lock or cross another Quote/Order if they were displayed will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC or, in the case of ITS Securities, IOX, and that is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b) Reserved

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

(d) Order Size -

(1) In Nasdaq-listed securities, any order in whole shares up to 999,999 shares may be entered into the Nasdaq Market Center for normal execution processing.

(2) Orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. Orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

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

4707. Entry and Display of Quotes/Orders

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

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

(2) Upon entry of a Quote/Order into the system, the Nasdaq Market Center shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Nasdaq Market Center Orders as described in Rules 4710(b) and 4714. For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to

that size increase. When a Pegged Order (including a Discretionary Order that is pegged) is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3) Consistent with Rule 4613, a Nasdaq Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the Nasdaq Market Center only their best bid and best offer Attributable Quotes/Orders. Notwithstanding Nasdaq Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the Nasdaq Market Center multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq -- The Nasdaq Market Center will display Quotes/Orders submitted to the system as follows:

(1) Attributable Quotes/Orders -- The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the system under the Nasdaq Quoting Market Participant's MPID, and also will be displayed in the order display service of the Nasdaq Market Center as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized hereunder for aggregation and display on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the Nasdaq Market Center will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders -- The price and size of a Nasdaq Quoting Market Participant's and Order Entry Firm's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the order display service of the Nasdaq Market Center as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the five best price levels in the Nasdaq Market Center on either side of the market. A Non-Attributable Quote/Order will not be displayed under the Nasdaq Quoting Market Participant's MPID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Market Center under an anonymous MPID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's or Order Entry Firm's Non-Attributable Quote/Order, the Nasdaq Market Center will automatically display a Non-Attributable Quote/Order in the order display service of the Nasdaq Market Center (consistent with the parameters described above) if it falls within the five best price levels in the Nasdaq Market Center on either side of the market.

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

(A) Odd-lots, Mixed Lots, and Rounding - The Nasdaq Market Center (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, the Nasdaq Market Center will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant and Order Entry Firm at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quote/Order that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(B) Aggregation and Display of Odd-lots Bettering the Inside Price Except as provided in Subsection (C) below, - odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE MPID, with the odd-lot share amounts of other Quoting Market Participants and Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.

(C) In the case of ITS Securities, odd lot share amounts of each

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

(D) Nasdaq Market Center Orders and Routing – Nasdaq Market Center Orders marked for routing as set out in Rule 4714 shall not be displayed in the Nasdaq Market Center while outside the Nasdaq Market Center. Nasdaq Market Center Orders marked for routing shall be displayed in the Nasdaq Market Center as set out in Rules 4701 and 4707 while such orders are in the Nasdaq Market Center.

(c) **Reserve Size** -- Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) **Summary Scan** -- The "Summary Scan" functionality is a query-only non-dynamic functionality for Nasdaq-listed securities only. It displays without attribution to Quoting Market Participants' MPIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the five best price levels in the Nasdaq Market Center.

(e) **NQDS Prime** -- "NQDS Prime" is a separate data feed for Nasdaq-listed securities that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the order display service of the Nasdaq Market Center.

(f) **IM Prime**--"IM Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated for ITS Securities in the Nasdaq Market Center.

4708. ITS Commitments

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

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

(2) Trade throughs. ITS/CAES Market Makers must use the Nasdaq

Market Center to comply with the trade through obligations set forth in Rules 5262 and 5264. The Nasdaq Market Center will reject any order of an Order Entry Firm that, if executed, would trade through an ITS Exchange

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use the Nasdaq Market Center to comply with the locked and crossed markets obligations set forth in Rules 5263. Any order or portion thereof entered by an Order Entry Firm that would create a locked/crossed market with an ITS Exchange will be rejected.

(b) Inbound ITS Commitments

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

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

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

4709. Nasdaq Closing Cross

(a) **Definitions.** For the purposes of this rule the term:

(1) “Imbalance” shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at a particular price at any given time.

(2) “Imbalance Only Order” or “IO” shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 3:30 p.m. and 3:59:59 p.m., but they cannot be modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). IO orders cannot be cancelled after 3:55:00 p.m. for any reason. IO sell (buy) orders will only execute at or above (below) the 4:00:00 Nasdaq Market Center offer (bid). All IO orders must be available for automatic execution.

(3) “Limit On Close Order” or “LOC” shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m.. LOC orders can be cancelled between 3:50:00 p.m. and

3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). LOC orders cannot be cancelled after 3:55:00 p.m. for any reason. LOC Orders will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.

(4) “Market on Close Order” shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. MOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). MOC orders cannot be cancelled after 3:55:00 p.m. for any reason. MOC orders will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(5) “Nasdaq Closing Cross” shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.

(6) “Order Imbalance Indicator” shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.

(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then beginning at 3:55 every 15 seconds until 3:59, and then beginning at 3:59 every 5 seconds until market close. The Order Imbalance Indicator shall contain the following real time information:

(1) the number of shares represented by MOC, LOC, and IO orders that are paired at a single price that is at or within the current Nasdaq Market Center inside.

(2) the size of any Imbalance;

(3) the buy/sell direction of any Imbalance; and

(4) indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices will be:

(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and

(B) The price at which both the MOC, LOC, and IO orders and all executable orders in the Nasdaq Market Center (excluding volume that is available only by order delivery) would execute.

(C) If no price satisfies subparagraph (A) or (A) and (B) above, Nasdaq will disseminate the phrase “market buy” or “market sell”.

(c) Processing of Nasdaq Closing Cross.

(1) The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.

(2) The Nasdaq Closing Cross will occur at the price that

(A) maximizes the number of shares executed. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(B) minimizes any Imbalance. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(C) minimizes the distance from the 4:00:00 Nasdaq Market Center bid-ask midpoint.

(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in the Nasdaq Market Center would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) All orders executed in the Nasdaq Closing Cross will be executed at

the Nasdaq Closing Cross price, trade reported with SIZE as the contra party, and disseminated via the consolidated tape. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.

(5) Auxiliary Procedures. When significant trading volume is expected at the close of regular hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:

(i) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.

(ii) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.

(iii) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order Imbalance Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.

(iv) Adjusting the threshold values set forth in subparagraph (c)(2)(D) to no greater than 20 percent.

4710. Participant Obligations in the Nasdaq Market Center

(a) Registration

Upon the effectiveness of registration as a Nasdaq Market Maker, Nasdaq ECN, ITS/CAES Market Maker or Order Entry Firm, the Nasdaq Market Center Participant may commence activity within the Nasdaq Market Center. The extent of participation in Nasdaq by an Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into the Nasdaq Market Center.

(b) Nasdaq Market Center Orders

(1) General Provisions -- A Quoting Market Participant in a Nasdaq Market Center eligible security, as well as Order Entry Firms, shall be subject to the following requirements for Nasdaq Market Center Orders:

(A) Obligations - For each Nasdaq Market Center eligible security in which it is registered, a Quoting Market Participant must accept and

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

(i) Nasdaq Market Makers, Nasdaq Auto-Ex ECNs, and Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the Nasdaq Market Center, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

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

(iii) Nasdaq Order-Delivery ECNs shall participate in the order-delivery functionality of the Nasdaq Market Center, and shall accept the delivery of an order up to the size of the Nasdaq Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The Nasdaq Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iv) UTP Exchanges that choose to participate in the Nasdaq Market Center shall do so as described in subparagraph (f) of this rule and as otherwise described in the Nasdaq Market Center rules and the UTP Plan.

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

(i) Execution Algorithm - Price/Time Priority -- The system will execute Quotes/Orders in strict price/time priority within Nasdaq, and will attempt to access interest in the system in the following priority and order:

a. Displayed Quotes/Orders of Nasdaq Market Makers, ITS/CAES Market Makers, and Nasdaq ECNs, displayed Non-Attributable Quotes/Orders of Order Entry Firms, and displayed non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (e) of this rule), in time priority among such participants' Quotes/Orders;

b. Reserve Size of Nasdaq Quoting Market Participants and Order Entry Firms, in time priority among such participants' Quotes/Orders; and

c. Principal Quotes/Orders of UTP Exchanges, in time priority among such participants' Quotes/Orders.

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

a. Nasdaq Quoting Market Participants and Order Entry Firms can use the anti-internalization qualifier (AIQ) Quote/Order flag containing the “Y” value to deviate from time priority as follows:

Y – when the Y value is selected, the system will execute the flagged Quote/Order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and Order Entry Firms other than the party entering the AIQ “Y” flagged Quote/Order. If the only available trading interest is that of the same party that entered the AIQ “Y” flagged Quote/Order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting Quote/Orders (or unexecuted portions thereof) to the entering party or route the Quote/Order to another market as set out in Rule 4714 if the Quote/Order is marked for routing; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

b. Reserved

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

calculated as follows: $(\$10.00 - (\$10.00 \times .10 \text{ e.g. } \$1) - \$0.01 = \$8.99)$. For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding \$0.01. For example, in a stock with a current inside offer of \$10.00, the highest price at which a single sell order could be executed would be \$11.01 calculated as follows: $(\$10.00 + (\$10.00 \times .10 \text{ e.g. } \$1) + \$0.01 = \$11.01)$. This subsection shall not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.

d. An Auto-Ex Order in a Nasdaq-listed security that is designated IOC will interact solely with the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center ("Auto-Ex Eligible Participants"). An IOC Auto-Ex Order will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An IOC Auto-Ex Order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.

Upon entry into the Nasdaq Market Center, a Postable Auto-Ex Order will be processed in the same manner as an IOC Auto-Ex Order; provided, however, that if the Postable Auto-Ex Order includes discretionary prices, the order will be processed in the same manner as a Discretionary Order, but will interact solely with the Quotes/Orders of Auto-Ex Eligible Participants and will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. Any portion of a Postable Auto-Ex Order that cannot be immediately executed will be displayed, unless it would lock or cross the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant, in which case the Postable Auto-Ex Order (or any unexecuted portion thereof) will be

cancelled. Depending on the functionality specified by the Nasdaq Market Center Participant entering the order, a Postable Auto-Ex Order that is displayed will have the same characteristics and be subject to the same rules as a regular limit order or a Discretionary Order.

For purposes of this subclause d., any displayed Discretionary Order that may be executed against (or delivered to) an Auto-Ex Order at a price in the Discretionary Order's discretionary price range will be deemed to have been entered by an Auto-Ex Eligible Participant.

e. If a Nasdaq Market Center Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of Nasdaq Market Center Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of Nasdaq Market Center Participants within the incoming Discretionary Order's discretionary price range (including displayed Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by Nasdaq Market Center for potential display in conformity with Rule 4707(b). To the extent a Discretionary Order designated for routing is not executed in full in accordance with the procedures described above upon submission to the Nasdaq Market Center the order shall be routed as set out in Rule 4714.

When a Discretionary Order is displayed as a Quote/Order, Nasdaq Market Center Orders or Quotes/Orders entered at the displayed price (including

incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Nasdaq Market Center Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Nasdaq Market Center Orders or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Nasdaq Market Center Orders and Quotes/Orders entered by Nasdaq Market Center Participants in the automatic execution functionality of the Nasdaq Market Center, and will be delivered to Nasdaq Market Center Orders and Quotes/Orders entered by Nasdaq Order-Delivery ECNs.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

f. A Fill or Return order in an ITS Security will be executed solely by the Nasdaq Market Center at the best bid/best offer, without delivering the order to an ITS Exchange. The Nasdaq Market Center will, if necessary, execute against interest at successive price levels.

g. Nasdaq Market Center Orders marked for routing shall be processed in accordance with Rule 4714.

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

(i) If a Nasdaq Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to the Nasdaq Market Center, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to the Nasdaq Market Center a revised Attributable Quote/Order.

(ii) If a Nasdaq Order-Delivery ECN declines or partially fills a Nasdaq Market Center Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if a Nasdaq Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next eligible Quote/Order in queue. The system then will zero out those ECN Quote/Orders to which the order was delivered. If there are no other Quote/Orders at the declined price level, the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to the Nasdaq Market Center a revised Attributable Quote/Order.

(iii) If a Nasdaq ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the Nasdaq Market Center, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If a Nasdaq ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the

closed-quote state when the Nasdaq ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(v) ITS/CAES Market Makers

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

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

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

(2) Refresh Functionality

(A) Reserve Size Refresh -- Once a Nasdaq Quoting Market Participant's or Order Entry Firm's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to Nasdaq Market Center processing, Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant or Order Entry Firm, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares

remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's or Order Entry Firms Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh ("AQR") -- Once a Nasdaq Market Maker's or ITS/CAES Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to Nasdaq Market Center executions, the Nasdaq Market Maker or ITS/CAES Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to an amount less than a normal unit of trading, by a price interval designated by the Nasdaq Market Maker or ITS/CAES Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the Nasdaq Market Maker or ITS/CAES Market Maker, or in the absence of such size level designation, to the automatic refresh size.

(iii) This functionality shall produce an Attributable Quote/Order.

(iv) The AQR functionality described in this subparagraph shall only be available for use in connection with a Nasdaq Market Maker's or ITS/CAES Market Maker's "Legacy Quote." This functionality shall be available only to Nasdaq Market Makers or ITS/CAES Market Makers.

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

(A) Locked/Crossed Quotes/Orders During Market Hours -- If during market hours, a participant enters into the Nasdaq Market Center a

Quote/Order that will lock/cross the market (as defined in Nasdaq Rule 4613(e) or in Nasdaq Rule 5263(a) or (b)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as an Nasdaq Market Center Order for processing (consistent with subparagraph (b) of this rule) as follows:

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

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

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

(B) Locked/Crossed Quotes/Orders in ITS Securities at the Open-- If the market in an ITS Security is locked or crossed at 9:30 a.m., Eastern Time, the Nasdaq Market Center will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. While the Nasdaq Market Center is clearing locked or crossed market, or if a newly submitted Quote/Order would create a locked or crossed market, National Market Center will prevent a locked or crossed market from being created by holding such Quotes/Orders in queue.

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

If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in subparagraph (B) above, the ITS/CAES Market Maker can use the anti-

internalization qualifier as set forth in Rule 4710(b) (1)(B)(ii)(a) to deviate from time priority. Order Entry Firms that enter locking/crossing Quotes/Orders also can use the anti-internalization qualifier as provided for in Rule 4710(b)(1)(B)(ii)(a) to deviate from time priority.

(4) A Nasdaq Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from the Nasdaq Market Center at any time. However, the market maker has the specific obligation to monitor its status in the Nasdaq Market Center to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

(5) If a Nasdaq Market Maker's Attributable Quote/Order is reduced to less than a round-lot amount on one side of the market due to Nasdaq Market Center executions, the Nasdaq Market Center will close the Market Maker's quote in the Nasdaq Market Center on that side of the market, and the Nasdaq Market Maker will be permitted a grace period of 30 seconds within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the AQR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. A Nasdaq Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have the exhausted side of its quotation restored by the system at a price \$0.01 inferior to the lowest displayed bid price or the highest displayed offer price in that security as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced \$0.01 inferior to the lesser of either: a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, the Nasdaq Market Center will instead re-open the exhausted market maker's bid/offer quote at a price \$0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than \$0.01, the system will refresh that bid/offer to a price of \$0.01. Except as provided in subparagraph (b)(6) of this rule, a Nasdaq Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days.

(6) Notwithstanding the provisions of subparagraph (5) above:

(A) a Nasdaq Market Maker that obtains an excused withdrawal pursuant to Rule 4619 or an ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 5222 prior to withdrawing from the Nasdaq Market Center may reenter the Nasdaq Market Center according to the conditions of its withdrawal; and

(B) a Nasdaq Market Maker or ITS/CAES Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in the Nasdaq Market Center, may reenter the Nasdaq Market Center after a clearing arrangement has been reestablished and the market maker has complied with requirements for participation in the Nasdaq Market Center. Provided however, that if Nasdaq finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(7) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from the Nasdaq Market Center pursuant to subparagraph (b)(5) of this rule.

(8) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with the Nasdaq Market Center inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from the Nasdaq Market Center and a closed-quote status, and (a) if the Quoting Market Participant is a Nasdaq Market Maker, an excused withdrawal pursuant to Rule 4619, or (b) an ITS/CAES Market Maker, an excused withdrawal pursuant to Rule 5222. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into Nasdaq Market Center from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by Nasdaq pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

(c) Reserved

(d) Order Entry Firms

All entries in the Nasdaq Market Center shall be made in accordance with the procedures and requirements set forth in these rules. Orders may be entered in the Nasdaq Market Center by the Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

(e) UTP Exchanges – Direct Participation in Nasdaq Market Center

Direct participation in the Nasdaq Market Center by UTP Exchanges is voluntary. If a UTP Exchange does not participate directly in the Nasdaq Market Center, the UTP Exchange's quotes may nevertheless be accessible in accordance with Rule 4714.

A UTP Exchange may voluntarily participate in the Nasdaq Market Center System directly if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (e) of this rule.

The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the Nasdaq Market Center.

(1) Order Entry -- UTP Exchanges that elect to participate in the system shall be permitted to enter Nasdaq Market Center Orders into the system subject to the conditions and requirements of Rules 4706. Nasdaq Market Center Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(A) UTP Exchange Principal Orders/Quotes -- UTP Exchanges that elect to participate in the system shall transmit to the Nasdaq Market Center a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Nasdaq Market Center Orders. The Nasdaq Market Center shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Market Center under the MPID for the UTP Exchange, and shall also display such Quote/Order in the order display service of the Nasdaq Market Center as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the five best price levels in the Nasdaq Market Center.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the Nasdaq Market Center Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Nasdaq Market Center Orders, as described in

subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Market Center under the MPID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the order display service of the Nasdaq Market Center in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Nasdaq Market Center Order Processing -- UTP Exchanges that elect to participate in the system shall be required to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Nasdaq Market Center Orders they enter into the system processed as described in subparagraph (b) of this rule.

(4) Reserved

(5) Decrementation -- UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules - Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711. Clearance and Settlement

All transactions executed in the Nasdaq Market Center shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

4712. Obligation to Honor System Trades

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

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

4713. Compliance with Rules and Registration Requirements

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

(b) (1) If a Nasdaq Market Center Participant fails to maintain a clearing relationship as required under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705, it shall be removed from the Nasdaq Market Center until such time as a clearing arrangement is reestablished.

(2) A Nasdaq Market Center Participant that is not in compliance with its obligations under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705 shall be notified when Nasdaq exercises its authority under paragraph (b)(1) of Rule 4713.

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

4714. Routing – Nasdaq-Listed Securities

If a Nasdaq Market Center Order for a Nasdaq-listed security is not executed in its entirety in the Nasdaq Market Center and such order is designated for routing, the order (or the unfilled portion thereof — referred to hereinafter as an "order") shall be processed as follows:

(a) The order shall be routed to those markets accessible through the Nasdaq Market Center router that are displaying quotes priced better than the Quotes/Orders available in the Nasdaq Market Center as a limit order. Routed orders shall be executed pursuant to the rules and regulations of the destination market.

(b) In the event an order routed from the Nasdaq Market Center to another market is not executed in its entirety, the remaining portion of the order shall be returned to the Nasdaq Market Center and shall be eligible for execution, or re-routing, if marketable. A market order that is converted to a limit order for routing will become a market order again upon return to the Nasdaq Market Center.

(c) In the event an order becomes non-marketable while it is in the execution queue, or the order is not marketable upon return to Nasdaq, the order shall be included in the Nasdaq Market Center book (if consistent with the order's time in force condition) in accordance with the time priority established by the time-stamp assigned to the order when it was initially submitted to the Nasdaq Market Center. Once an order is placed in the Nasdaq Market Center book it shall not be routed outside the Nasdaq Market Center.

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

(e) Orders shall not be routed to other markets during the Nasdaq Market Center Opening and Closing Crosses, as described in Rules 4704 and 4709.

(f) Orders shall not be routed to other markets at prices that exceed the execution price governors described in Rule 4710(b)(1)(B)(ii)(c).

4715. Adjustment of Open Quotes and/or Orders

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

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

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

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

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

(2) Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".

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

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

securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

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

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

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

4719. Anonymity

(a) Pre-Trade Anonymity

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

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

(b) Full Anonymity

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

(2) (A) The processing described in paragraph (b)(1) shall not apply to transactions executed in the Nasdaq Market Center when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.

(B) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.

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

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

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

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

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

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

(B) In the situations described in paragraphs (b)(2) or (b)(4) of Rule 4719, the member retains the obligation to comply with Rules 17a-3(a)(1) and 17a-4(a) because it possesses the identity of its contra party.

4800. PROCEDURES FOR REVIEW OF NASDAQ LISTING DETERMINATIONS

4810. Purpose and General Provisions

(a) The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of Nasdaq that prohibit or limit the listing of an issuer’s securities on Nasdaq based upon Nasdaq Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial listing on, Nasdaq.

(b) An issuer may file a written request for an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a proceeding under the Rule 4800 Series. Nasdaq may grant extensions or exceptions where it deems appropriate.

(c) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel (as defined in Rule 4830), Nasdaq Listing and Hearing Review Council (the “Listing Council”), or the Nasdaq Board of Directors (the “Nasdaq Board”), as part of its respective review, may request additional information from the issuer. The issuer will be afforded an opportunity to address the significance of the information

requested.

(d) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or Nasdaq Board, as part of its respective review, may consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information.

(e) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or Nasdaq Board, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding. The Listing Council or the Nasdaq Board, as part of its respective review, may also consider any action by an issuer during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the issuer's securities been listed on Nasdaq at the time. The issuer will be afforded notice of such consideration and an opportunity to respond. Furthermore, the issuer may be subject to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

4815. Written Notice of Staff Determination

(a) If the Listing Qualifications Department or the Listing Investigations Department reaches a determination (the "Staff Determination") to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series. If the issuer does not request a hearing within the period specified in Rule 4820, the securities of the issuer will be suspended and Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.

(b) An issuer that receives a Staff Determination to prohibit continued listing of the issuer's securities under Rule 4815(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's StockWatch and Listing Qualifications Departments.¹⁵ The public announcement shall be made as

¹⁵ Notification may be provided to the StockWatch section of Nasdaq's MarketWatch Department at 1-800-537-3929 or (240) 386-6046 (telephone), (240) 386-6047 (facsimile) and to the Hearings Department of Nasdaq's Listing Qualifications

promptly as possible, but not more than seven calendar days following receipt of the Staff Determination.

4820. Request for Hearing

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with The Nasdaq Office of Listing Qualifications Hearings (the “Hearings Department”). A request for a hearing shall stay the delisting action pending the issuance of a written determination by a Listing Qualifications Panel. If no hearing is requested within the seven calendar day period, the right to request review is waived, and the Staff Determination shall take immediate effect. All hearings shall be held before a Listing Qualifications Panel as described in Rule 4830. All hearings shall be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department shall make an acknowledgment of the issuer’s hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer shall be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Hearings Department stating the specific grounds for the issuer’s contention that the Staff Determination was in error or requesting an extension of time to comply with the listing requirements or an exception to those requirements, as permitted by Rule 4810. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Staff Determination.

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to Nasdaq to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of written submission from the issuer, \$4,000; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$5,000.

4830. The Listing Qualifications Panel

(a) All hearings will be conducted before an independent panel (the “Listing Qualifications Panel”) composed of at least two persons, not employees of the Nasdaq or its subsidiaries, designated by the Nasdaq Board of Directors. No person shall serve as a Listing Qualifications Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter.

Department at (301) 978-8079 (telephone), (301) 978-8080 (facsimile).

(b) Prior to the hearing, the Listing Qualifications Panel will review the written record, as defined in Rule 4870. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons. Hearings are generally scheduled to last one hour, but may be extended at the discretion of the Listing Qualifications Panel. The Listing Qualifications Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings will be kept. The record of proceedings before a Listing Qualifications Panel will be kept by the Hearings Department.

(c) After the hearing, the Listing Qualifications Panel will issue a written decision (the “Panel Decision”) describing the specific grounds for the determination and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The Panel Decision will be promptly provided to the issuer and is effective immediately unless it specifies to the contrary. If the Panel determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Panel Decision specifies to the contrary. The Panel Decision will provide notice that the issuer may request review of the Panel Decision by the Nasdaq Listing and Hearing Review Council within 15 calendar days of the date of the Panel Decision and that the Panel Decision may be called for review by the Nasdaq Listing and Hearing Review Council within 45 calendar days from the date of the Panel Decision pursuant to Rule 4840.

(d) If, following the hearing, the Listing Qualifications Panel cannot reach an unanimous decision regarding the matter under review, a Panel Decision shall not be issued and the issuer shall be notified of this circumstance. Thereafter, the issuer shall be provided an additional hearing before a Listing Qualifications Panel composed of three persons who did not participate in the previous hearing. The issuer may determine whether the hearing will be conducted based on the written record or an oral hearing, whether in person or by telephone. The issuer may submit any documents or other written material in support of its request for review, including any information not available at the time of the initial hearing before the Listing Qualifications Panel. There shall be no fee for the new hearing.

(e) If the Panel determines to delist the issuer and the issuer does not timely request review by the Listing Council and the Listing Council does not call the matter for review, Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.

4840. Review by the Nasdaq Listing and Hearing Review Council

(a) The Nasdaq Listing and Hearing Review Council (the “Listing Council”) is a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-laws whose responsibilities include the consideration of determinations to limit or prohibit the listing of an issuer’s securities.

(b) The issuer may initiate the Listing Council’s review of any Panel Decision by

making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of Appeals and Review. The request will not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of \$4,000 to Nasdaq to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of Appeals and Review will make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

(c) The Listing Council may also consider any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The issuer will be promptly informed of the reasons for the review and will be provided a deadline to provide a written submission if the issuer wishes. The institution of discretionary review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. At the sole discretion of the Listing Council, the call for review of a Panel Decision may be withdrawn at any time prior to the issuance of a decision.

(d) The Listing Council will consider the written record and, at its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listing Council, is made. The Listing Council may also recommend that the Nasdaq Board of Directors ("Nasdaq Board") consider the matter. The record of proceedings before the Listing Council will be kept by the Nasdaq Office of Appeals and Review.

(e) The Listing Council will issue a written decision (the "Listing Council Decision") that affirms, modifies, or reverses the Panel Decision or that refers the matter to Nasdaq staff or to the Listing Qualifications Panel for further consideration. The Listing Council Decision will describe the specific grounds for the decision, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that the Nasdaq Board may call the Listing Council Decision for review at any time before its next meeting which is at least 15 calendar days following the issuance of the Listing Council Decision. The Listing Council Decision will be promptly provided to the issuer and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(f) If the Listing Council determines to delist the issuer and the Nasdaq Board does not call the matter for review, Nasdaq will submit an application to the Securities and Exchange Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.

4845. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council

(a) An issuer may request that the Listing Qualifications Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Panel Decision. An issuer's request for reconsideration shall not stay a Listing Qualifications Panel delisting determination unless the Listing Qualifications Panel issues a written determination staying the delisting prior to the scheduled date for delisting. An issuer's request for reconsideration shall not toll the time period set forth in Rule 4840(b) for the issuer to initiate the Listing Council's review of the Panel Decision. If the Listing Qualifications Panel grants an issuer's reconsideration request, the Listing Qualifications Panel shall issue a modified decision within 15 calendar days following the issuance of the original Panel Decision or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the issuer has requested reconsideration by the Listing Qualifications Panel, the Listing Council, in its discretion, may assert jurisdiction over the Panel Decision or may permit the Listing Qualifications Panel to proceed with the reconsideration.

(b) An issuer may request that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Listing Council Decision. An issuer's request for reconsideration shall not stay a Listing Council Decision unless the Listing Council issues a written determination staying the decision. If the Listing Council grants an issuer's reconsideration request, the Listing Council shall issue a modified decision within 15 calendar days following the issuance of the original Listing Council Decision or lose jurisdiction over the matter.

(c) The Listing Qualifications Panel and the Listing Council may correct clerical or other non-substantive errors in their respective decisions either on their own motion or at the request of an issuer. A copy of any such corrected decision shall be provided to the issuer.

4850. Discretionary Review by Nasdaq Board

(a) A Listing Council Decision may be called for review by the Nasdaq Board solely upon the request of one or more Director not later than the next Nasdaq Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review will be undertaken solely at the discretion of the Nasdaq Board and will not operate as a stay of the Listing Council Decision, unless the call for review specifies to the contrary.

(b) If the Nasdaq Board conducts a discretionary review, the review generally will be based on the written record considered by the Listing Council. However, the Nasdaq Board may, at its discretion, request and consider additional information from the

issuer and/or from Nasdaq staff. Should the Board consider additional information, the record of proceedings before the Nasdaq Board will be kept by the Nasdaq Office of Appeals and Review.

(c) If the Nasdaq Board conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy. The Nasdaq Board may affirm, modify or reverse the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or Nasdaq staff with appropriate instructions. This decision represents the final action of Nasdaq and will take immediate effect unless it specifies to the contrary. If the Nasdaq Board determines to delist the issuer, the securities of the issuer will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will submit an application to the Commission to strike the security from listing. A copy of such application will be furnished to the issuer in accordance with Section 12 of the Act and the rules thereunder.

(d) If the Nasdaq Board declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Listing Council Decision represents the final action of Nasdaq.

4870. Record on Review

(a) Documents in the written record may consist of the following items, as applicable: correspondence between Nasdaq and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer or the Listing Qualifications Department or the Listing Investigations Department, including any written request for an extension or exception as permitted in Rule 4810(b) and any response thereto. Any additional information requested from the issuer by the Listing Qualifications Panel, Listing Council, or Nasdaq Board as part of the review process will be included in the written record. The written record will be supplemented by the transcript of any hearings held during the review process and each decision issued. At each level of review under this Rule 4800 Series, the issuer will be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for issuer submissions, unless the issuer waives such production.

(b) In addition to the documents described in paragraph (a) above, if the issuer's bid price, market makers, or any information that the issuer releases to the public, is considered as permitted in Rule 4810, that information, and any written submission addressing the significance of that information, will be made part of the record.

(c) If additional issues arising under the Rule 4000 Series are considered, as permitted in Rule 4810, the notice of such consideration and any response to such notice will be made a part of the record.

4875. Document Retention Procedures

Any document submitted to Nasdaq in connection with a Rule 4800 proceeding that is not made part of the record will be retained by Nasdaq until the date upon which the Rule 4800 Series proceeding decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court.

4880. Delivery of Documents

Delivery of any document under this Rule 4800 Series by an issuer or by Nasdaq may be made by hand delivery to the designated address, by facsimile to the designated facsimile number and overnight courier to the designated address, or by e-mail if the issuer consents to such method of delivery. Delivery will be considered timely if hand delivered prior to the relevant deadline or upon being e-mailed or faxed and/or sent by overnight courier service prior to the relevant deadline. If an issuer has not specified a facsimile number or street address, delivery will be made to the last known facsimile number and street address. If an issuer is represented by counsel or a representative, delivery will be made to the counsel or representative.

4885. Computation of Time

In computing any period of time under the Rule 4800 Series, the day of the act, event, or default from which the period of time begins to run is not to be included. The last day of the period so computed is included, unless it is a Saturday, Sunday, federal holiday, or Nasdaq holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Nasdaq holiday.

4890. Prohibited Communications

(a) Unless on notice and opportunity for the appropriate Nasdaq staff and the issuer to participate, a representative of Nasdaq involved in reaching a Staff Determination, or an issuer, counsel to or representative of an issuer shall not make or knowingly cause to be made a communication relevant to the merits of a proceeding under this Rule 4800 Series (a "Prohibited Communication") to any member of the Listing Qualifications Panel or the Listing Council, to any Nasdaq Director who is participating in or advising in the decision in that proceeding, or to any Nasdaq employee who is participating or advising in the decision of these individuals.

(b) Listings Qualifications Panel members, Listing Council members, Nasdaq Directors and Nasdaq employees who are participating in or advising in the decision in a proceeding under this Rule 4800 Series, shall not make or knowingly cause to be made a Prohibited Communication to an issuer, counsel to or representative of an issuer, or a representative of Nasdaq involved in reaching a Staff Determination.

(c) If a Prohibited Communication is made, received, or caused to be made, Nasdaq will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Nasdaq will permit Nasdaq staff or the issuer, as applicable, to

respond to the Prohibited Communication, and will place any response in the record of the proceeding.

(d) If the issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, that submission will constitute a waiver of any claim that Nasdaq communications relating to the proposal were Prohibited Communications.

4900. BRUT SYSTEMS

4901. Definitions

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

- (a) The term "System securities" shall mean Nasdaq Market Center eligible securities as that term is defined in Rule 4701(s) and exchange-listed Intermarket Trading System (ITS) eligible securities as defined in Rule 5210(c).
- (b) The term "Effective Time" shall mean, for orders so designated, the time at which the order shall become eligible for display and potential execution with other orders in the System.
- (c) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant.
- (d) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better. This order type is available for Nasdaq-listed and other Exchange-listed securities.
- (e) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price. A market order may have a limit price beyond which the order shall not be executed. This order type is available for Nasdaq-listed and other Exchange-listed securities.
- (f) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.
- (g) The term "Nasdaq Market Center" shall mean the automated system owned and operated by Nasdaq pursuant to the Rule 4700 Series.
- (h) The term "The BRUT ECN System," or "System," shall mean the automated system owned and operated by Brut, which is owned and operated by Nasdaq, which enables Participants to execute transactions in System securities; to have reports of the transactions automatically forwarded to the appropriate National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the System Participant(s) for clearance and settlement; and to provide System Participants with sufficient monitoring and updating capability to participate in an automated execution environment.
- (i) The term "Participant" shall mean a member that fulfills the obligations contained in Rule 4902 regarding participation in the System. Until December 31, 2005, the term "Participant" shall also include non-members that desire to use the System and otherwise meet all other requirements for System participation.
- (j) The term "System Book Feed" shall mean a data feed for System eligible securities that Brut will make available to Participants and third-party vendors.

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

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

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

(n) The term "Good-till-Cancelled-Overnight" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 4:00 p.m. Eastern Time, after which it shall be held by the System in a pending state, ineligible for display or execution, until the following trading day, when it will become eligible for display and execution from 7:30 a.m. until 4:00 p.m. Eastern Time on that and all subsequent trading days, until a date provided by the entering party (or if no such date is given, indefinitely) until cancelled by the entering party.

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

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

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

(r) The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the Nasdaq inside bid or offer (for Nasdaq-listed securities) or the national best bid or offer (for ITS securities), as appropriate. The Participant entering a Pegged Order can specify that order's price will either equal the inside quote or improves the inside quote by an amount set by the entering party on the same side of the market (a "Regular Pegged Order") or offset the inside quote on the contra side of the market by an amount (the "Offset Amount") set by the Participant (e.g., \$0.01 less than the inside offer or \$0.02 more than the inside bid) (a "Reverse Pegged Order"). The Participant entering a Pegged Order

may (but is not required to) specify a limit price, to define a price at which pegging of the order will stop and the order will be permanently converted into an un-pegged limit order at limit price. This order type is available for Nasdaq-listed and other Exchange-listed securities.

(s) The term “Discretionary” shall mean an order that when entered into System has both a displayed bid or offer price, as well as a non-displayed discretionary price range and size (which shall be equal to or less than the Order’s Reserve Size) at which the Participant is also willing to buy or sell, if necessary. This order type is available for Nasdaq-listed and other Exchange-listed securities.

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

(u) The term “Agency Away” shall mean an agency order designated by the entering Participant as eligible for execution at a price inferior to the then-current national best bid/offer. This order type is available only for Nasdaq-listed securities.

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

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

4902. System Participant Registration

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

- (1) execution of applicable agreements with Nasdaq;
- (2) satisfaction of the Brut New Accounts Policies & Procedures requirements;
- (3) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which System compared trades may be settled;
- (4) acceptance and settlement of each System trade that System identifies as having been effected by such Participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and

settlement of such identified System trade by the clearing member on the regularly scheduled settlement date;

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

(b) Access to the System by non-System participants is available through the Nasdaq Market Center as provided in the Rule 4700 Series.

4903. Order Entry Parameters

(a) To Brut Orders—

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

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

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

(C) A To Brut Order to sell short shall not be executed if the execution of such order would violate Rule 3350 or, in the case of ITS Securities, SEC Rule 10a-1. In said circumstances, the price of the To Brut Order shall be adjusted to \$.01 above the Nasdaq inside bid for Nasdaq-listed securities or, in the case of exchange-listed securities, \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

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

(b) Brut Cross Orders—

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

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

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

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

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

Exchange shall remain at the exchange until executed or cancelled by the entering party.

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

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

(F) A Brut Cross Order, including those designated as an Aggressive Cross Order, Super Aggressive Cross Order and Directed Cross Order, to sell short shall not be executed in the System if the execution of such order would violate Rule 3350 or, in the case of ITS Securities, SEC Rule 10a-1. In said circumstances, the price of the Brut Cross Order shall be adjusted to \$.01 above the Nasdaq inside bid for Nasdaq-listed securities or, in the case of exchange-listed securities, \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.

(c) Thru Brut Orders—

(1) General. A Thru Brut Order is an order submitted to the System that is designated for routing to another market center. This order type is available for Nasdaq-listed and Exchange-listed securities. The following requirements shall apply to Thru Brut Orders:

- (A) A Thru Brut Order shall be a market order or a limit order, and must indicate whether it is a buy, short sale, short-sale exempt, or long sale. A Thru Brut Order can be designated as Immediate or Cancel, End-of-Day, Good-till-Cancelled, Day, or Good-till-Time, or Effective Time.
- (B) Thru Brut Orders do not participate in Brut Routing Process as described in Rule 4905(b). Instead such orders are sent directly to the market center selected by the entering party. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party.

(d) Hunter Orders -

(1) General. A Hunter Order is a non-displayed order that will execute against trading interest in the System or another market center. This order type is available only for Nasdaq-listed securities. After 6:30 p.m. Eastern Time, Hunter Orders will execute only against other orders in the System. The following requirements shall apply to Hunter Orders:

- (A) A Hunter Order shall be a limit order, and must indicate whether it is a buy, short sale, short-sale exempt, or long sale. A Hunter Order can be

designated as Immediate or Cancel, End-of-Day, Good-till-Cancelled, Day, or Good-till-Time, or Effective Time.

(B) Hunter Orders shall be executed as follows:

(i) to the extent marketable upon receipt against orders in the System, pursuant to the Brut Book Process as described in Rule 4905(a); then/or

(ii) if not marketable upon receipt against orders in the System but marketable against the displayed quotes of other market centers, pursuant to the Brut Routing Process as described in Rule 4905(b).

(iii) If not marketable upon receipt against any quote displayed in the System or another market center, the order shall be retained, but not be displayed, in the System and shall remain available for execution via the Brut Book and/or Brut Routing Processes should the order become marketable.

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

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

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

(f) Order Size - Any order in whole shares up to 1,000,099 shares may be entered into the System, subject to a dollar volume limitation of \$75,000,000.

4904. Entry and Display of Orders

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

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

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

(3) Good-till-Cancelled, Day, orders can be entered into the System (or previously entered orders cancelled) between the hours 7:30 a.m. to 4:00 p.m. Eastern Time. Pegged, Discretionary, Immediate-or-Cancel and End-of-Day To Brut Orders, Good-till-Time, Good-till-Canceled Overnight and

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

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

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

(2) Nasdaq Market Center - For each Nasdaq Market Center eligible security, the best priced order to buy and sell resident in the System shall be displayed and eligible for execution within the Nasdaq Market Center. The System may also provide to the Nasdaq Market Center additional orders, up to and including all orders in System, in Nasdaq Market Center eligible securities.

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

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

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

(B) Minimum Increments and Rounding—The minimum trading increment for System quotations priced \$1.00 and above is \$.01. For quotations priced below \$1.00 the minimum increment is \$.0001.

(i) For System display purposes, quotations in sub-penny increments \$1.00 and above will be rounded down (for bids) or up (for offers) by the System to the nearest \$.01 increment. Orders so rounded shall have no superior execution priority

compared to orders previously submitted at the relevant \$.01 increment.

(ii) For Nasdaq Market Center display purposes, any quotations in sub-penny increments shall be rounded down (for bids) and up (for offers) to the nearest \$.01 increment. Sub-penny quotations that are rounded for display purposes shall be executed at their actual price, rather than the rounded price at which they are displayed.

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

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

4905. Order Processing

(a) Brut Book Order Process

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

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

(A) Displayed Orders;

(B) Reserve Size;

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

(D) Hunter Orders.

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

(3) Processing of Locking/Crossing Orders: If during market hours, a Participant enters a To Brut order that will lock/cross the market (as defined in Rule 4613(e) or in Rule 5263(a) or (b)), the System shall adjust the price of the order to \$.01 less than the current best bid quotation (for buy orders) or \$.01 more than the current best offer quotation (for sell orders) and thereafter be processed as a Reverse Pegged Order.

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

(A) Displayed orders which are designated as “Directed Cross Orders” by a Participant shall be routed as described in Rule 4903(b)(1)(D). This order type is available for Nasdaq-listed and Exchange-listed securities.

(B) Displayed orders which are designated as “Aggressive Cross Orders” by a Participant that are subsequently crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so crossed. This order type is available for Nasdaq-listed and Exchange-listed securities

(C) Displayed orders which are designated as “Super Aggressive Cross Orders” by a Participant that are subsequently locked or crossed by the displayed quotation of another market center shall be executed pursuant to the Brut Order Routing Process upon being so locked or crossed. This order type is available for Nasdaq-listed and Exchange-listed securities

(b) Brut Order Routing Process

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

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

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

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

4906. Clearance and Settlement

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

4907. Obligation to Honor System Trades

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

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

4908. Compliance with Rules and Registration Requirements

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the System identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration a Participant or any other fitting penalty under Nasdaq's Rules.

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

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

4909. Adjustment of Open Orders

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

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

(b) Buy Orders--Buy orders shall be reduced by the dividend amount. To the extent that the dividend includes a sub-penny increment, the order will displayed and processed as set forth in Rule 4904(b)(3)(B). Open buy and sell orders that are

adjusted by the System pursuant to the above rules, and that thereafter continuously remain in the System, shall retain the time priority of their original entry.

4910. Anonymity

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

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

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

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

4911. Clearly Erroneous Transactions

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

4912. Normal Business Hours

The Brut System operates in accordance with the following schedule:

Order Entry: 6:30 am, ET

Pre-Market Trading Session: 8:00 am to 9:30 am, ET

Market Hours: 9:30 am, ET to 4:00 pm, ET

Post-Market Hours: 4:00 pm, ET to 6:30 pm, ET

After Hours Session: 6:30 pm, ET to 8:00 pm, ET

4913. Limitation of Liability

Except as provided in Rule 4626(b), Nasdaq and Brut and their affiliates, shall not be liable for any losses, damages, or other claims arising out of the System or its use. Any losses, damages, or other claims, related to a failure of the System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the System.

4914. Confidentiality Between Introducing Broker Function and Brut System

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

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