

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO
SUBSIDIARIES**

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"), and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution")[, and the controlled subsidiary The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq")] (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Other Defined Terms — The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD[,] and NASD Regulation [and Nasdaq], as applicable.

B. Functions and Authority of the NASD — The NASD shall have ultimate responsibility for the rules and regulations of the Association and its operation and administration. As set forth below in Sections II.A.[,] and III.A., [and the V.A.,] the NASD has delegated certain authority and functions to its Subsidiaries. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or

rejection by the NASD Board in accordance with procedures established by that Board. Any function or responsibility as a registered securities association under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Restated Certificate of Incorporation or the by-laws is hereby reserved, except as expressly delegated to the Subsidiaries. In addition, the NASD expressly retains the following authority and functions:

1. through 3. No Change.

4. To review the rulemaking and disciplinary decisions of the Subsidiaries

(See Sections II.B.[,] and III.B.[, and V.B.] below).

5. through 10. No Change.

11. To take action *ab initio* in an area of responsibility delegated to NASD Regulation in Section II[, to Nasdaq in Section III,] or to NASD Dispute Resolution in Section [V] III.

C. No Change.

D. Market Regulation Committee

The Market Regulation Committee shall exercise the functions contained in Rule 4000A Series, among others, in accordance with the procedures specified therein.

E. Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of Subsidiaries

Notwithstanding the delegation of authority to the Subsidiaries, as set forth in Sections II.A.[,] and III.A.[, and V.A.] below, the staff, books, records, and premises of the Subsidiaries are the staff, books, records, and premises of the NASD subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of the Subsidiaries are officers, directors, employees, and agents of the NASD for purposes of

the Act. [The books and records of Nasdaq shall be subject at all times to inspection and copying by NASD Regulation.]

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section I.B.11., the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. through o. No Change.

p. To establish and assess fees and other charges on NASD members, persons associated with NASD members, and others using the services or facilities of NASD or NASD Regulation.

q. through r. No Change.

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

[t. To develop and adopt rule changes to establish trading practices with respect to OTC Equity Securities, as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.]

[u.] s. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for [Nasdaq securities traded in the third market and] securities traded in the over-the-counter market, and (ii) establishing trading practices with respect to these securities.

t. To develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of the over-the-counter market.

2. No Change.

B. NASD Regulation Board Procedures

1. Rule Filings — The NASD Board shall review and ratify a rule change adopted by the NASD Regulation Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members; (b) raises significant policy issues in the view of the NASD Regulation Board, and the NASD Regulation Board refers the rule change to the NASD Board; or (c) is materially inconsistent with a recommendation of the National Adjudicatory Council. If the NASD Regulation Board does not refer a rule change to the NASD Board for review, the NASD Regulation Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Regulation Board's action. [During the process of developing rule proposals, NASD Regulation staff shall consult with and seek the advice of Nasdaq and NASD Dispute Resolution staff before presenting any rule proposal to the NASD Regulation Board.]

2. No Change.

C. Supplemental Delegation Regarding Committees

1. No Change.

2. Uniform Practice Code Committee

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

i. to issue interpretations or rulings with respect to the Uniform Practice Code ("UPC"); [and]

ii. to advise the NASD Regulation Board with respect to the clearance and settlement of securities transactions and other financial responsibility and operational matters that may require modifications to the UPC or other Rules of the Association[.]; and

iii. to exercise the functions contained in Rule 11890 of the Rules of the Association in accordance with the procedures specified therein.

b. No Change.

[III. Nasdaq]

[A. Delegation of Functions and Authority]

[1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:]

[a. To operate the third market for non-Nasdaq securities listed on a registered exchange and the automated systems supporting it.]

[b. To provide and maintain a telecommunications network infrastructure linking market participants for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of

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

[c. To collect, process, consolidate, and provide to NASD Regulation the information requisite to operation of the surveillance audit trail.]

[d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded in the third market for non-Nasdaq securities listed on a registered exchange, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.]

[e. To develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of the third market for non-Nasdaq securities listed on a registered exchange.]

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

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

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

[i. To determine allocation of Nasdaq resources.]

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

[k. To operate Stockwatch in conjunction with NASD Regulation pursuant to Section IV.]

[2. All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NASD Board in accordance with procedures established by the NASD Board.]

[B. Nasdaq Board Procedures]

[1. Rule Filings — The NASD Board shall review and ratify a rule change adopted by the Nasdaq Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members or issuers; or (b) raises significant policy issues in the view of the Nasdaq Board, and the Nasdaq Board refers the rule change to the NASD Board. If the Nasdaq Board does not refer a rule change to the NASD Board for review, the Nasdaq Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the Nasdaq Board's action. During the process of developing rule proposals, Nasdaq staff shall

consult with and seek the advice of NASD Regulation staff before presenting any rule proposal to the Nasdaq Board.]

[C. Supplemental Delegation Regarding Committees]

[1. Quality of Markets Committee ("QOMC")]

[(a) The QOMC shall be a committee appointed by the Nasdaq Board and shall have the following functions under the Delegation Plan:]

[(i) To provide advice and guidance to the Nasdaq Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the third market for non-Nasdaq securities listed on a registered exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, and other participants therein.]

[(ii) To advise the Nasdaq Board with respect to national market systems plans and linkages between the facilities of Nasdaq and registered exchanges.]

[(b) The QOMC will have broad representation that is equally balanced between Industry and Non-Industry committee members. The committee members shall include broad representation, including investors, market makers, integrated retail firms, and order entry firms.]

[(c) At all meetings of the QOMC, a quorum for the transaction of business shall consist of a majority of the QOMC, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent

of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.]

[2. Market Operations Review Committee ("MORC")]

[(a) The MORC shall be a committee appointed by the Nasdaq Board and shall exercise the functions contained in Rules 5265 and 11890 of the Rules of the Association in accordance with the procedures specified therein with respect to non-Nasdaq securities listed on a registered exchange. NASD Regulation shall receive weekly reports of all determinations made by the staff or MORC under Rules 5265 and 11890 with respect to non-Nasdaq securities listed on a registered exchange, for regulatory review.]

[(b) The MORC shall be appointed by resolution of the Nasdaq Board and shall have no more than 50 percent of its members directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.]

[IV. Stockwatch]

[The Stockwatch section handles the trading halt functions for non-Nasdaq exchange-listed securities traded in the over-the-counter market (i.e., the Third Market). Review of all questionable market activity, possible rule infractions or any other matters

that require any type of investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement actions that NASD Regulation may deem necessary. NASD Regulation staff at all times will have access to all records and files of the Stockwatch function.]

[V.] III. NASD Dispute Resolution, Inc.

A. No Change.

B. NASD Dispute Resolution Board Procedures

Rule Filings — The NASD Board shall review and ratify a rule change adopted by the NASD Dispute Resolution Board before the rule change becomes the final action of the Association if the rule change: (a) imposes fees or other charges on persons or entities other than NASD members; or (b) raises significant policy issues in the view of the NASD Dispute Resolution Board, and the NASD Dispute Resolution Board refers the rule change to the NASD Board. If the NASD Dispute Resolution Board does not refer a rule change to the NASD Board for review, the NASD Dispute Resolution Board action shall become the final action of the Association unless called for review by any member of the NASD Board not later than the NASD Board meeting next following the NASD Dispute Resolution Board's action. [During the process of developing rule proposals, NASD Dispute Resolution staff shall consult with and seek the advice of Nasdaq and NASD Regulation staff before presenting any rule proposal to the NASD Dispute Resolution Board.]

C. No Change.

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**BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC.**

ARTICLE I

DEFINITIONS

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

(a) through (v) No Change.

[(w) "Nasdaq" means The Nasdaq Stock Market, Inc.];

(x) through (hh) are redesignated as (w) through (gg)

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ARTICLE IV

MEMBERSHIP

Application for Membership

Sec. 1.(a) Application for membership in the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD, and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution, the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association;

(2) through (3) No Change.

(b) through (c) No Change.

Sec. 2. through **Sec. 8.** No Change.

ARTICLE V

REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS

Qualification Requirements

Sec. 1. No Change.

Application for Registration

Sec. 2. (a) Application by any person for registration with the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation,[Nasdaq,] and NASD Dispute Resolution, the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association; and

(2) No Change.

(b) through (c) No Change.

Sec. 3. through **Sec. 4.** No Change.

ARTICLE VI

DUES, ASSESSMENTS, AND OTHER CHARGES

Power of the NASD to Fix and Levy Assessments

Sec. 1. The NASD shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the NASD each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the NASD and issuers and any other persons using any facility or system which the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the NASD from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the NASD operates or controls. The NASD may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the NASD may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Sec. 2. through Sec. 5. No Change.

ARTICLE VII

BOARD OF GOVERNORS

Powers and Authority of Board

Sec. 1. (a) through (b) No Change.

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the NASD may delegate any power of the NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, [the Nasdaq Board,] the NASD Dispute Resolution Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

Authority to Cancel or Suspend for Failure to Submit Required Information

Sec. 2. No Change.

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. The Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the NASD[,] or NASD Regulation, [or Nasdaq,] and the participation in any such system of any or all persons or the trading therein of any or all securities; and

(b) No Change.

Sec. 4. through Sec. 15. No Change.

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ARTICLE XIII

POWERS OF BOARD TO IMPOSE SANCTIONS

Sec. 1. The Board is hereby authorized to impose appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of

activities, functions, and operations of a member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) No Change.

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the By-Laws of the NASD, NASD Regulation, [Nasdaq,] or NASD Dispute Resolution, the Rules of the Association, or the federal securities laws, including the rules and regulations adopted thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) through (e) No Change.

Sec. 2. No Change.

ARTICLE XIV

UNIFORM PRACTICE CODE

Authority to Adopt Code

Sec. 1. No Change.

Administration of Code

Sec. 2. The administration of any Uniform Practice Code, or any amendment thereto, adopted by the Board pursuant to Section 1, shall be vested in the Board, and the Board is hereby granted such powers as are reasonably necessary to achieve its effective operation. In the exercise of such powers, the Board may issue explanations and interpretations and make binding rulings with respect to the applicability of the

provisions of the Uniform Practice Code to situations in which there is no substantial disagreement as to the facts involved. In accordance with the Delegation Plan, the Board may delegate to the NASD Regulation Board [and the Nasdaq Board] such of the Board's powers hereunder as it deems necessary and appropriate to achieve effective administration and operation of the Uniform Practice Code.

Transactions Subject to Code

Sec. 3. No Change.

ARTICLE XV

LIMITATION OF POWERS

Prohibitions

Sec. 1. Under no circumstances shall the Board or any officer, employee, or member of the NASD have the power to:

(a) No Change.

(b) use the name o[f]r the facilities of the NASD in aid of any political party or candidate for any public office.

Sec. 2. through Sec. 3. No Change.

Conflicts of Interest

Sec. 4. (a) No Change.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or

interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors, even though the disinterested governors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors even though the disinterested governors be less than a quorum. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation[, Nasdaq,] or NASD Dispute Resolution.

Sec. 5 No Change.

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[BY-LAWS OF THE NASDAQ STOCK MARKET, INC.]

[ARTICLE I]

[DEFINITIONS]

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

[(a) "Act" means the Securities Exchange Act of 1934, as amended;]

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

[(c) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;]

[(d) "Commission" means the Securities and Exchange Commission;]

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

[(f) "day" means calendar day;]

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

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

[(i) "Director" means a member of the Board]

[(j) "Industry Director" or "Industry committee member" means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")) or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's,

or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to the NASD (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;]

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

[(l) "Nominating Committee" means that Nominating Committee appointed pursuant to these By-Laws;]

[(m) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer or employee of an issuer of securities listed on the national securities exchange operated by The NASDAQ Stock Market LLC; or (3) any other individual who would not be an Industry Director or Industry committee member; and]

[(n) "Public Director" or "Public committee member" means a Director or committee member who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or the NASD;]

[ARTICLE II]

[OFFICES]

[Location]

[Sec. 2.1 The address of the registered office of the Corporation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the Corporation may require.]

[Change of Location]

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

[ARTICLE III]

[MEETINGS OF STOCKHOLDERS]

[Annual Meetings of Stockholders]

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

[(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given

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

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

[(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by the Corporation naming the

nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.]

[Special Meetings of Stockholders]

[Sec. 3.2 Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board or the Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth day prior

to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.]

[General]

[Sec. 3.3 (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.]

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

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

[Conduct of Meetings]

[Sec. 3.4 The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted

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

[ARTICLE IV]

[BOARD OF DIRECTORS]

[General Powers]

[Sec. 4.1 The property, business, and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may exercise all such powers of the Corporation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation, or these By-Laws. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-

Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to the Corporation's staff.]

[Number of Directors]

[Sec. 4.2 The exact number of members of the Board shall be determined by resolution adopted by the Board from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled in accordance with the Restated Certificate of Incorporation.]

[Qualifications]

[Sec. 4.3 Directors need not be stockholders of the Corporation. The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives.]

[Election]

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

[Resignation]

[Sec. 4.5 Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President, or the Secretary. Any

such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.]

[Removal]

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

[Disqualification]

[Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.]

[Filling of Vacancies]

[Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining

term of office for the vacant Director position is not more than six months, no replacement shall be required.]

[Quorum and Voting]

[Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.]

[(b) Except as provided herein or by applicable law, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.]

[Regulation]

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

[Meetings]

[Sec. 4.11 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholders, no notice of the annual meeting of the Board need be given. Otherwise,

such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.12.]

[(b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.12.]

[(c) Special meetings of the Board may be called by the Chair of the Board, by the Chief Executive Officer, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.]

[(d) Directors or members of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.]

[Notice of Meetings; Waiver of Notice]

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

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

[(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing or by electronic transmission) whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article X, Section 10.3(b).]

[(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.]

[Committees]

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

committee may be removed from such committee only by the Board, after appropriate notice.]

[(b) The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Corporation to the extent permitted by law. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.]

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

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

the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board. An Executive Committee member shall hold office for a term of one year.]

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

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

[(g) The Board shall appoint an Audit Committee.]

[(h) The Board may appoint a Nominating Committee. The Nominating Committee shall nominate Directors for each vacant or new Director position on the Board.]

[(i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six

members, at least two shall be Public committee members. If the Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry committee members shall be current members of the Board.]

[(ii) A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.]

[(iii) Members of the Nominating Committee shall be appointed annually by the Board and may be removed by majority vote of the Board.]

[(iv) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.]

[(i) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.]

[(j) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.]

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

[Conflicts of Interest; Contracts and Transactions Involving Directors]

[Sec. 4.14 (a) A Director shall not directly or indirectly participate in any adjudication of the interests of any party if that Director has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director shall recuse himself or herself or shall be disqualified.]

[(b) No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders.]

[Action Without Meeting]

[Sec. 4.15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in accordance with applicable law.]

[ARTICLE VI]

[COMPENSATION]

[Compensation of Board Members]

[Sec. 6.1 The Board may provide for reasonable compensation of the Chair of the Board and the Directors. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Corporation.]

[ARTICLE VII]

[OFFICERS, AGENTS, AND EMPLOYEES]

[Principal Officers]

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

[Election of Principal Officers; Term of Office]

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

[(b) If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board.]

[(c) Each principal officer shall hold office until a successor is duly elected and qualified, or until death, resignation, or removal.]

[Subordinate Officers, Agents, or Employees]

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

[Delegation of Duties of Officers]

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

[Resignation and Removal of Officers]

[Sec. 7.5 (a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.]

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

[Bond]

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

[Chair of the Board]

[Sec. 7.7 The Chair of the Board shall preside at all meetings of the Board and stockholders at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.]

[Chief Executive Officer]

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

[President]

[Sec. 7.9 The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs of the Corporation. The President shall have all powers and duties usually

incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.]

[Vice President]

[Sec. 7.10 The Board shall elect one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.]

[Secretary]

[Sec. 7.11 The Secretary shall act as Secretary of all meetings of the stockholders and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation, and shall have supervision over the care and custody of the corporate records and the corporate seal of the Corporation. The

Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.]

[Assistant Secretary]

[Sec. 7.12 In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.]

[Treasurer]

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

[Assistant Treasurer]

[Sec. 7.14 In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.]

[ARTICLE VIII]

[INDEMNIFICATION]

[Indemnification of Directors, Officers, Employees, and Agents]

[Sec. 8.1 (a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation, or is or was a Director, officer, or employee of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:]

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

reasonably incurred by such person in connection with any such action, suit, or proceeding; or]

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

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

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

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

[(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.]

[(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to

be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.]

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

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

[(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.]

[(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.]

[Indemnification Insurance]

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

[ARTICLE IX]

[CAPITAL STOCK]

[Certificates]

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

[Signatures]

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

[(b) If any such certificates are countersigned by a transfer agent other than the Corporation or its employee, or by a registrar other than the Corporation or its employee,

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

[Stock Ledger]

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

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

[Transfers of Stock]

[Sec. 9.4 (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of the Corporation. The Board may appoint, or authorize any principal

officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.]

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

[Cancellation]

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

[Lost, Stolen, Destroyed, and Mutilated Certificates]

[Sec. 9.6 In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its

discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.]

[Fixing of Record Date]

[Sec. 9.7 The Board may fix a record date in accordance with Delaware law.]

[ARTICLE X]

[MISCELLANEOUS PROVISIONS]

[Corporate Seal]

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

[Fiscal Year]

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

[Waiver of Notice]

[Sec. 10.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a waiver thereof by the person or persons

entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors, or members of a committee of Directors need be specified in any waiver of notice.]

[(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.]

[Execution of Instruments, Contracts, Etc.]

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

[(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of the Corporation by any principal officer or subordinate officer of the Corporation, or, to the extent designated for such

purpose from time to time by the Board, by an employee or agent of the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.]

[Form of Records]

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

[ARTICLE XI]

[AMENDMENTS; EMERGENCY BY-LAWS]

[By Stockholders]

[Sec. 11.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholders by the affirmative vote of the holders of at least 66 2/3 percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.]

[By Directors]

[Sec. 11.2 To the extent permitted by the Restated Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board by a resolution adopted by a vote of a majority of the whole Board.]

[Review by The NASDAQ Stock Market LLC]

[Sec. 11.3 For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, any proposed adoption, alteration, amendment, change or repeal (an “amendment”) of any By-Law shall be submitted to the Board of Directors of The NASDAQ Stock Market LLC (the “Exchange Board”), and if the Exchange Board determines that such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.]

[Emergency By-Laws]

[Sec. 11.4 The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.]

[ARTICLE XII]

[THE NASDAQ STOCK MARKET LLC]

[Self-Regulatory Organization Function of The NASDAQ Stock Market LLC]

[Sec. 12.1 (a) For so long as the Corporation shall control The NASDAQ Stock Market LLC, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of The NASDAQ Stock Market LLC and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of The NASDAQ Stock Market LLC relating to its regulatory functions (including disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of The NASDAQ Stock Market LLC to carry out its responsibilities under the Act.]

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

[(c) To the extent they are related to the activities of The NASDAQ Stock Market LLC, the books, records, premises, officers, Directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of The NASDAQ Stock Market LLC for the purposes of, and subject to oversight pursuant to, the Act.]

[Cooperation with the Commission]

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

[Consent to Jurisdiction]

[Sec. 12.3 The Corporation and its officers, Directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and The NASDAQ Stock Market LLC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of The NASDAQ Stock Market LLC, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission, or The NASDAQ Stock Market LLC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding

is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, Directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of The NASDAQ Stock Market LLC.]

[Further Assurances]

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

[Board Action with Respect to Voting Limitations of the Certificate of Incorporation]

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

* * * * *

BY-LAWS OF NASD REGULATION, INC.

* * * * *

ARTICLE IV

BOARD OF DIRECTORS

Sec. 4.1 through 4.13 No Change.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14(a) No Change.

(b) No contract or transaction between NASD Regulation and one or more of its Directors or officers, or between NASD Regulation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Regulation and the NASD[,] or NASD Dispute Resolution[, or Nasdaq].

Sec. 4.15 through **Sec. 4.16** No Change.

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BY-LAWS OF NASD DISPUTE RESOLUTION, INC.

ARTICLE I

DEFINITIONS

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

(a) through (p) No Change.

[(q) "Nasdaq" means The Nasdaq Stock Market, Inc.];

(r) through (v) redesignated (q) through (u)

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ARTICLE IV

BOARD OF DIRECTORS

Sec. 4.1 through **4.13** No Change.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14(a) No Change.

(b) No contract or transaction between NASD Dispute Resolution and one or more of its Directors or officers, or between NASD Dispute Resolution and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies

the contract or transaction by the affirmative vote of a majority of the disinterested Directors; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholder entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between NASD Dispute Resolution and the NASD[,] or NASD Regulation[, or Nasdaq].

Sec. 4.15 through 4.16 No Change.

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0100. GENERAL PROVISIONS

* * * * *

0120. Definitions.

(a) No Change.

(b) “Association”

The term “Association” means, collectively, the NASD, NASD Regulation, [Nasdaq,] and NASD Dispute Resolution.

(c) through (i) No Change.

(j) “NASD”

The term “NASD” means, collectively, the NASD, NASD Regulation, [Nasdaq,]and NASD Dispute Resolution.

(k) through (q) No Change.

* * * * *

0130. Delegation, Authority and Access

(a) The National Association of Securities Dealers, Inc., delegates to its subsidiaries (NASD Regulation, Inc. and NASD Dispute Resolution, Inc.[and The Nasdaq Stock Market, Inc.], hereinafter “Subsidiaries”) the authority to act on behalf of the Association as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Commission pursuant to its authority under the Act.

(b) No Change.

[0140. Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors]

[(a) In order to enhance the physical security of the facilities, systems, data, and information of The Nasdaq Stock Market, Inc. (“Nasdaq”), it shall be the policy of Nasdaq to conduct a fingerprint-based criminal records check of (i) all prospective and current employees, (ii) all prospective and current independent contractors who have or are anticipated to have access to Nasdaq facilities for ten business days or longer, and (iii) all prospective and current temporary employees who have or are anticipated to have access to Nasdaq facilities for ten business days or longer. Nasdaq shall apply this policy in all circumstances where permitted by applicable law.]

[(b) Nasdaq shall submit fingerprint cards obtained pursuant to the foregoing policy to the Attorney General of the United States or his or her designee for identification and processing. Nasdaq shall at all times maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.]

[(c) Nasdaq shall evaluate information received from the Attorney General or his or her designee in accordance with the terms of a written fingerprint policy and provisions of applicable law. A felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to Nasdaq's facilities.]

[(d) A prospective employee who refuses to submit to fingerprinting shall be denied employment by Nasdaq, and a prospective independent contractor or temporary employee who refuses to submit to fingerprinting shall be denied access to Nasdaq facilities. A current employee, independent contractor, or temporary employee who refuses to submit to fingerprinting will be terminated following notice and being given three opportunities to submit.]

* * * * *

4000. THE NASD/NASDAQ TRADE REPORTING FACILITY

4100. GENERAL

Members may use the NASD/Nasdaq Trade Reporting Facility to report transactions executed otherwise than on an exchange in all [Nasdaq Global Market and Nasdaq Capital Market securities and convertible bonds listed on Nasdaq] NMS stocks as defined in SEC Rule 600(b)(47) (“designated securities”). Members that use the NASD/Nasdaq Trade Reporting Facility must comply with the Rule 4000 and 6100 Series, as well as all other applicable rules. The Rule 4000 Series shall apply only to members using the NASD/Nasdaq Trade Reporting Facility.

4110. Use of NASD/Nasdaq Trade Reporting Facility on a Test Basis

NASD may at any time authorize the use of the NASD/Nasdaq Trade Reporting Facility on a test basis for whatever studies it considers necessary and appropriate.

4200. Definitions

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

(1) No Change.

(2) “Designated securities” means all [Nasdaq National Market and Nasdaq Capital Market securities and convertible bonds listed on Nasdaq] NMS stocks as defined in SEC Rule 600(b)(47).

(3) No Change.

(4) “Market Maker” means an “exchange market maker” or “OTC market maker,” as those terms are defined in SEC Rule 600(b)[11Ac1-1 of the Act], that is registered in a particular designated security as such with an exchange or a registered securities association or a facility thereof. A member is considered a Market Maker only in those designated securities for which it is registered as such.

(5) No Change.

[(6) “Nasdaq Global Market” or “NGM” is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq Global Market security. The Nasdaq Global Market is the successor to the Nasdaq National Market.]

[(7) “Nasdaq Global Market security” or “NGM security” means any authorized security in the Nasdaq Global Market.]

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

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

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

(11) through (15) redesignated as (7) through (11)

[16] (12) “Trade Reporting Facility Participant” or “Participant” means any member in good standing that uses the NASD/Nasdaq Trade Reporting Facility.

[4400. Trading of Certain Dually Listed Securities]

[The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) permits issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq Global Market (“NGM”). Nasdaq makes an independent determination of whether such issuers satisfy all applicable listing requirements and requires issuers to enter into a dual listing agreement with the Nasdaq Exchange.]

[Nasdaq does not exercise its authority under Nasdaq Exchange Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”),

remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. While such securities continue to trade through facilities of the NASD, NASD shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System ("ITS") shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.]

[Dually listed securities shall be treated as CQS securities under all NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the ITS/CAES System.]

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

applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.]

* * * * *

4621. Suspension and Termination by NASD Action

NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant's ability to use NASD/Nasdaq Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions.

4622. Termination of NASD/Nasdaq Trade Reporting Facility Service

NASD may, upon notice, terminate NASD/Nasdaq Trade Reporting Facility service in the event that a Trade Reporting Facility Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered.

4630. Reporting Transactions in Designated Securities

This Rule 4630 Series applies to the reporting by members of transactions in designated securities to the NASD/Nasdaq Trade Reporting Facility.

4631. Definitions

Terms used in this Rule 4630 Series shall have the meaning as defined in NASD's By-Laws and Rules, and SEC Rule [11Aa2-1]600 and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

4632. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the NASD/Nasdaq Trade Reporting Facility or if the NASD/Nasdaq Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the NASD/Nasdaq Trade Reporting Facility Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to the NASD/Nasdaq Trade Reporting Facility Outside Normal Market Hours

(A) through (D) No Change.

(3) All members shall report as soon as practicable to the NASD Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the NASD/Nasdaq Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the NASD/Nasdaq Trade Reporting Facility, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.

(4) No Change.

(5) All trade tickets for transactions in designated securities shall be time-stamped at the time of execution based on Eastern Time.

(6) through (7) No Change.

(8) The NASD/Nasdaq Trade Reporting Facility will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the NASD/Nasdaq Trade Reporting Facility that contain the time of execution, but that do not contain the appropriate modifier.

(9) No Change.

(10) To identify pre-opening and after-hours trades reported late, the NASD/Nasdaq Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the NASD/Nasdaq Trade Reporting Facility more than 90 seconds after execution.

(b) Which Party Reports the Transaction

(1) through (4) No Change.

(5) In transactions conducted through a Reporting ECN (as defined in Rule 6110) that are reported to the NASD/Nasdaq Trade Reporting Facility, the Reporting ECN shall ensure that transactions are reported in accordance with Rule 6130(c).

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members that report transactions to the NASD/Nasdaq Trade Reporting Facility, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) through (2) No Change.

(3) (A) No Change.

(B) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported to the NASD/Nasdaq Trade Reporting Facility as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction to the NASD/Nasdaq Trade Reporting Facility by submitting the following report(s):

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

(ii) Where the initial leg of the transaction has been reported to the NASD/Nasdaq Trade Reporting Facility, [R]regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:

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

b. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting to the NASD/Nasdaq Trade Reporting Facility either a single trade report marked with a “riskless principal” capacity indicator or by submitting the following reports:

(1) where required by this Rule, a tape report marked with a “principal” capacity indicator; and

(2) either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order, the order will be reported by the exchange. A member may, however, submit to the NASD/Nasdaq Trade Reporting Facility a clearing only report or a non-

tape, non-clearing report for the “riskless” leg of a riskless principal transaction where the initial leg has been reported on or through an exchange. Any such report submitted to the NASD/Nasdaq Trade Reporting Facility shall comply with all applicable requirements for trade reports set forth in this Rule 4632.

Example:

BUY as principal 100 shares on an exchange at 40 to fill an existing order;

DO NOT REPORT this leg (will be reported by exchange).

SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.

A member MAY submit to the NASD/Nasdaq Trade Reporting Facility either a non-tape, non-clearing report or a clearing-only report for this leg marked with a "riskless principal" capacity indicator.

(e) Transactions Not Required To Be Reported for Publication Purposes

The following types of transactions shall not be reported to the NASD/Nasdaq Trade Reporting Facility for publication purposes:

(1) through (4) No Change.

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

(6) transactions reported on or through an exchange[.];

(7) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and

(8) purchases of securities off the floor of an exchange pursuant to a tender offer.

(f) No Change.

(g) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled in accordance with Rule 11890, members shall report to the NASD/Nasdaq Trade Reporting Facility the cancellation of any trade previously submitted to the NASD/Nasdaq Trade Reporting Facility. The member responsible for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

(2) No Change.

(h) A member may agree to allow a Participant to report and lock-in trades on its behalf, if both parties have completed an agreement to that effect as specified by NASD and submitted it to the NASD/Nasdaq Trade Reporting Facility. However, the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the NASD/Nasdaq Trade Reporting Facility are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.

* * * * *

4633. Trading Halts

(a) Authority to Initiate Halts In Trading of Designated Securities Reported to the NASD/Nasdaq Trade Reporting Facility

NASD, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange reported to the NASD/Nasdaq Trade Reporting Facility in a designated security whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends the listing, to:

(A) through (D) No Change.

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

(A) through (C) No Change.

(3) shall close the NASD/Nasdaq Trade Reporting Facility to trade reporting activity whenever the NASD/Nasdaq Trade Reporting Facility is unable to transmit real-time trade reporting information to the applicable Securities Information Processor. If the NASD/Nasdaq Trade Reporting Facility closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.

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

(b) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 4633(a) to initiate a trading halt or close the NASD/Nasdaq Trade Reporting Facility, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.

(2) No Change.

4700. NASD ITS/CAES System — Quotation/Order and Display [Execution] Services

4701. Definitions

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

(a) through (b) No Change.

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

(d) through (f) No Change.

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

(h) The term "Firm Quote Rule" shall mean SEC Rule [11Ac1-1]602.

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

(j) through (n) No Change.

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

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

(q) No Change.

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

(1) an order and quotation [execution] service that enables Participants to enter and display quotes and orders and respond to orders delivered [execute transactions in active securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment]; and

(2) a trade reporting service that, among other things, provides for the reporting of transactions in eligible securities; compares trade information entered by Participants and submits "locked-in" trades for clearing to the National Securities Clearing Corporation (NSCC) for clearance and settlement; transmits last-sale reports of transactions automatically pursuant to an effective transaction

reporting plan[to the National Trade Reporting System], if required, for dissemination to the public and industry; and provides participants with monitoring [and risk management] capabilities to facilitate participation in a "locked-in" trading environment[;].

(s) through (u) No Change.

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

(w) Reserved [The term "Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of entering orders in active securities into the system.]

(x) Reserved

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

(z) No Change.

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

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

(cc) No Change.

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

(ee) through (gg) No Change.

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

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

(jj) through (kk) No Change.

(ll) Reserved [The term "Fill or Return" shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by Participants without

delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges.]

(mm) No Change.

(nn) Reserved [The term "Discretionary" shall mean, for orders in eligible securities so designated, an order that when entered into the system has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an eligible security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.]

(oo) No Change.

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

(qq) No Change.

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

(ss) No Change.

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

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

4705. Participant Registration

(a) Participation in the system as either an ITS/CAES Market Maker or solely for purposes of transaction reporting pursuant to Rule 4720 (a "Trade Reporting Only Participant") [an Order Entry Firm] requires current registration as such with NASD[the Association]. Such registration shall be conditioned upon the [Order Entry Firm's] ITS/CAES Market Maker's or Trade Reporting Only Participant's initial and continuing compliance with the following requirements:

(1) execution of an applicable agreement as required by NASD[with the Association];

(2) through (3) No Change.

(4) maintenance of the physical security of the equipment located on the premises of the [Order Entry Firm] ITS/CAES Market Maker or Trade Reporting

Only Participant to prevent the improper use or access to the system, including unauthorized entry of information into the system; and

(5) acceptance and settlement of each trade that the system identifies as having been effected by such [Order Entry Firm] ITS/CAES Market Maker or Trade Reporting Only Participant or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified trade by the clearing member on the regularly scheduled settlement date.

(b) In addition to the requirements set forth in paragraph (a) above,

[P]participation in the system as an ITS/CAES Market Maker shall also be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.

(c) The registration required hereunder will apply solely to the qualification of a Trade Reporting Only Participant or ITS/CAES Market Maker [Participant] to participate in the system. Such registration shall not be conditioned upon registration in any particular eligible or active securities.

(d) Each Trade Reporting Only Participant or ITS/CAES Market Maker [Participant] shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(e) through (f) No Change.

4706. Order Entry Parameters

(a) [~~Non-Directed Orders~~]Attributable Orders—

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

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

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

(i) No Change.

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

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

[(iv)] Starting at 7:30 a.m., until the 4:00 p.m. market close, IOC and Day [Non-Directed] Orders may be entered into the system (or previously entered orders cancelled), but such orders

entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. [GTC o]Orders may be entered (or previously entered [GTC] orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open[, or GTC orders carried over from previous trading days,] will not become available for execution until 9:30 a.m. Eastern Time.

[(v) An order may be designated as "Fill or Return," in which case it shall be executed solely against the Quotes/Orders of Participants at the best bid/best offer within the system. The system will, if necessary, execute against interest at successive price levels. A Fill or Return Order will not trade through the quotation of an ITS Exchange.]

[(vi) a. An order may be designated as "Discretionary", in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferred Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. Starting at 7:30 a.m., until the 4:00 p.m. market close,

Discretionary Orders may be entered into the system (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the system at market open.]

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

Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the system at market open.]

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

[(viii)](iv) No Change.

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

[(x)](v) No Change.

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

marketable upon receipt by the system, it will be retained by the system.

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

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

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

[(F)](E) A Participant may enter an an [Non-Directed] Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel, and limit orders designated as Total Immediate or Cancel[, and Discretionary Orders] whose displayed price [or discretionary price range] would lock or cross another Quote/Order if they were displayed shall be rejected[held in a time-priority queue that will begin to be processed by the system at market open]. [If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant.] Limit orders that are not designated as Immediate or Cancel orders shall be retained by the system for potential display in conformity with Rule 4707(b) [and/or potential execution in conformity with Rule 4710(b)(1)(B)].

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

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

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

(b) Reserved

(c) through (d) No Change.

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

4707. Entry and Display of Quotes/Orders

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

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

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

(3) through (4) No Change.

(b) Odd lot or mixed lot share amounts of each individual ITS/CAES Market Maker shall be rejected. [aggregated separately and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. An odd lot share amount will be cancelled if it represents an ITS/CAES

Market Maker's best priced quote or order within the system. Odd lot share amounts will be cancelled at the end of the day.]

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

4708. ITS Commitments

(a) Compliance with Rule 5200 Series[.]

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

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

[(3)] (2) Locked and Crossed Markets. Any quotes/orders that would lock or cross the NBBO or the system BBO will be rejected by the system.[ITS/CAES Market Makers must use the system to comply with the locked and crossed markets obligations set forth in Rules 5263.]

(b) Inbound ITS Commitments

(1) though (2) No Change.

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

All inbound ITS Commitments will have a time in force (TIF) of 5 seconds.

(c) Outbound ITS Commitments entered by Quoting Market Participants must be in accordance with the applicable provision of the Rule 5200 Series and the ITS Plan. Outbound ITS Commitments will be treated as Immediate or Cancel (IOC or IOX, if it includes the 4:00PM to 6:30PM session) and will have a TIF not to exceed 5 seconds (or 30 seconds for purposes of ITS Commitments sent to an ITS Participant Exchange unable to process ITS Commitments with a 5 second TIF). Once an ITS commitment is entered, it cannot be cancelled by the ITS/CAES market maker.

4709. Reserved

4710. Participant Obligations in the System

(a) Registration

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

(b) [Non-Directed] Preferred Orders

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

(A) Obligations — For each eligible security in which it is registered, a Quoting Market Participant must accept and execute individual [Non-Directed] Preferred Orders against its quotation, in an

amount equal to or smaller than [the combination of] the [Displayed] Attributable Quote/Order in a round lot or multiple thereof. [and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in the system. This obligation shall also apply to the Non-Attributable Quotes. Quoting Market Participants shall participate in the system as follows:]

[ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the system. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.] ITS/CAES Market Makers [that elect order delivery] shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's [Displayed] Attributable Quote/Order[and Reserve Size].

ITS/CAES Market Maker [that elect order delivery]shall be required to execute the full size of such order [(even if the delivered order is a mixed lot or odd lot)] unless that interest is no longer available in the ITS/CAES Market Maker's system, in which case the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

(B) If a Quoting Market Participant enters a Preferred Order, the order shall be delivered in an amount equal to or less than the Attributable Quote/Order of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best

bid/best offer when the Preferred Order is next in line to be delivered .

Any unexecuted portion of a Preferred Order shall be returned to the

entering Participant. If the Quoting Market Participant is not at the best

bid/best offer when the Preferred Order is next in line to be delivered

(or executed), the Preferred Order shall be returned to the entering

Participant. In addition, if the execution of the Preferred Order by the

Quoting Market Participant would be contrary to provisions of the Trade-

Through Rule (Rule 5262), the Preferred Order shall be returned to the

entering Participant. [Processing of Non-Directed Orders — Upon entry of

a Non-Directed Order into the system, the system will ascertain who the

next Quoting Market Participant in queue to receive an order is and shall

deliver an execution to Quoting Market Participants that participate in the

automatic-execution functionality of the system, or shall deliver a

Liability Order to Quoting Market Participants that participate in the

order-delivery functionality of the system. Non-Directed Orders entered

into the system shall be delivered to or automatically executed against

Quoting Market Participants' Displayed Quotes/Orders and Reserve Size,

in strict price/time priority, as described in the algorithm contained in

subparagraph (b)(B)(i) of this rule. The individual time priority of each

Quote/Order submitted to the system shall be assigned by the system

based on the date and time such Quote/Order was received. Remainders of

Quote/Orders reduced by execution, if retained by the system, shall retain

the time priority of their original entry. For purposes of the execution

algorithms described in paragraphs (i) and (ii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the quotation montage of the system, remain in system and available for execution.]

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

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

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

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

[a. If a Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the system will first attempt to match off the order against the Quoting Market Participant's own Order if the participant is at the best bid/best offer in the system. Quoting Market Participants may avoid any attempted automatic system matching permitted by this paragraph

through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:]

[Y — if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.]

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

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

[c. If a Quoting Market Participant enters a Quote or Non-Directed Order that would result in the system either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system

shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting \$0.01. For example, in a stock with a current inside bid of \$10.00, the maximum price at which a single sell order could be executed would be \$8.99 calculated as follows: $(\$10.00 - (\$10.00 \times .10 = \$1) - \$0.01 = \$8.99)$. For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done at a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding \$0.01. For example, in a stock with a current inside offer of \$10.00, the highest price at which a single sell order could be executed would be \$11.01 calculated as follows: $(\$10.00 + (\$10.00 \times .10 = \$1) + \$0.01 = \$11.01)$. This subsection shall

not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.]

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

unexecuted portion of a Discretionary Order will then be retained by the system for potential display in conformity with Rule 4707(b).]

[When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the

overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by Quoting Market Participants in the automatic execution functionality of the system, and will be delivered to Non-Directed Orders and Quotes/Orders entered by order delivery ITS/CAES Market Maker.]

[For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.]

[e. A Fill or Return order in an eligible security will be executed solely by the system at the best bid/best offer, without delivering the order to an ITS Exchange. The

system will, if necessary, execute against interest at successive price levels.]

[f. If a Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the system by 10% or more it will receive a warning message rejecting the order. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a Participant enters a Non-Directed Order that, at the time of entry, would cross the best bid/offer in the system by 20% or more, the Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant. Non-Directed Orders Priced Under \$1.00: For Non-Directed Orders priced under \$1.00, such orders shall receive a rejection warning if they cross the best bid/offer in the system by \$0.10 or more. If the participant overrides the warning message, the Non-Directed Order will be entered into the system for normal processing. If a Participant enters a Non-Directed Order priced under \$1.00 that, at the time of entry, would cross the best bid/offer in the system by \$0.20 or more, that Non-Directed order will be rejected by the system; the rejection may not be overridden by the participant.]

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

(i) If an ITS/CAES Market Maker declines or partially fills a [Non-Directed] Preferred Order without immediately transmitting to the system a revised Attributable Quote/Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond immediately in any manner [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] to the entering Participant.

(ii) No Change.

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

certifies that it can meet [the 5-second] a minimum response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) All entries in the system shall be made in accordance with the requirements set forth in the [NNMS]NASD ITS/CAES User Guide or similar documentation, as published from time to time.

[(2) Refresh Functionality]

[Once a Quoting Market Participant's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to the system processing, the system will refresh the displayed size out of Reserve Size to a size-level designated by the Quoting Market Participant. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be

displayed in the Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares.]

[(3)](2) Entry of Locking/Crossing Quotes/Orders — At all times, [T]the system [shall process locking/crossing Quotes/Orders as follows:]

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

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

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

[Once the lock/cross is cleared, if the participant's order is not completely filled, the system may, if consistent with the

parameters of the Quote/Order, reformat the order and display it in the system as a Quote/Order on behalf of the entering Quoting Market Participant. If an order is not eligible to be reformatted and displayed, the system will reject the remainder of the order back to the entering participant. In ITS Securities, orders entered by Order Entry Firms are not eligible to be reformatted and displayed.]

[(B) Locked/Crossed Quotes/Orders in ITS Securities

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

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

[If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in subparagraph (B)

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

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

(A) through (B) No Change.

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

[(c) Reserved]

[(d) Order Entry Firms]

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

* * * * *

4712. Obligation to Honor System Trades

(a) No Change.

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

4713. Compliance with Rules and Registration Requirements

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

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

(2) A Participant or Trade Reporting Only Participant that is not in compliance with its obligations under paragraph (a)(2) of Rule 4705 shall be notified when NASD exercises its authority under paragraph (b)(1) of Rule 4713.

(3) No Change.

4714. Reserved

4715. Adjustment of Open Quotes and/or Orders

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

(a) through (b) No Change.

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

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

[(2)] Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".

(3) through (4) redesignated as (2) through (3)

[(5)](4) 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)](5) Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) No Change.

* * * * *

4719. [Anonymity] Reserved

[(a) Pre-Trade Anonymity]

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

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

[(b) Full Anonymity]

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

[(2) Reserved.]

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

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

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

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

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

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

[(B) In the situations described in paragraphs (b)(2) or (b)(4) of Rule 4719, and solely with respect to the member that submits, and

receives an execution of, a fully anonymous Non-Attributable Quote/Order that is a Preferred Order, the member retains the obligation to comply with Rules 17a-3(a)(1) and 17a-4(a) because it possesses the identity of its contra party.]

4720. Trade Reporting Through the [Execution Services of the] System

Subject to the conditions set forth below, [members] Quoting Market Participants and Trade Reporting Only Participants, as defined in Rule 4705(a), may utilize the system to report trades in eligible securities required or eligible to be reported to [Nasdaq]N^{ASD} pursuant to the Rule [6100 and] 6400 Series.

[(1)](a) Members shall include the time of execution and all other regulatory information as required by NASD Rules, including the Rule 6400 Series, on reports submitted to the system; [and]

[(2)](b) For transactions between members, the members who are parties to the trade shall agree to all trade details prior to submitting the report to the system. Members that intend to use the system to submit the trade to clearing must[, and] have in effect and on file with [Nasdaq]N^{ASD}, an [Automated Confirmation Transaction Service] N^{ASD} Service Bureau/Executing Broker Supplement to the [Nasdaq] N^{ASD} Services Agreement ("Attachment [2]C Agreement"), and an [Nasdaq National Market Execution System]N^{ASD} Give-Up Addendum to the N^{ASD} [Nasdaq] Services Agreement ("[Nasdaq] N^{ASD} Give-Up Agreement"). In the event that the parties do not have such agreements in effect and on file with NASD, NASD will only facilitate the reporting of the transaction pursuant to an effective transaction reporting plan; the parties must use an alternative mechanism for clearing and comparing the transaction, as necessary.

* * * * *

[4900. BRUT SYSTEM (System)]

[4901. Definitions]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(n) The term "Good-till-Cancelled-Overnight" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 4:00 p.m. Eastern Time, after which it shall be held by the System in a pending state, ineligible for display or execution, until the following trading day, when it will become eligible for display and execution from 7:30 a.m. until 4:00 p.m. Eastern Time on that and all subsequent trading days, until a date provided by the entering party (or if no such date is given, indefinitely) until cancelled by the entering party.]

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

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

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

[(r) The term "Pegged" shall mean, for priced limit orders so designated, that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the national best bid or offer, as appropriate. The Participant entering a Pegged Order can specify that order's price will either equal the inside quote or improve the inside quote by an amount set by the entering party on the same side of the market (a "Regular Pegged Order") or offset the inside quote on the contra side of the market by an amount (the "Offset Amount") set by the Participant (e.g., \$0.01 less than the inside offer or \$0.02 more than the inside bid) (a "Reverse Pegged Order"). The Participant entering a Pegged Order may (but is not required to) specify a limit price, to define a price at which pegging of the order will stop and the order will be permanently converted into an un-pegged limit order at limit price. Offset amounts for Pegged Orders are priced in \$0.01 increments. However, if at any time an offset amount specified by a Participant does not result in an offer or a bid that is fully compliant with the minimum price variation provisions of Rule 4904, then, for an offer, the applicable offset amount will be the smallest amount that results in a compliant order and is greater than the specified offset amount, and, for a bid, the applicable offset amount will be the largest amount that results in a compliant order and is smaller, than the specified offset amount.]

[(s) The term "Discretionary" shall mean an order that when entered into System has both a displayed bid or offer price, as well as a non-displayed discretionary price

range and size (which shall be equal to or less than the Order's Reserve Size) at which the Participant is also willing to buy or sell, if necessary.]

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

[(u) Reserved]

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

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

[4902. System Participant Registration]

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

[(1) execution of a System Subscriber Agreement;]

[(2) satisfaction of the Brut New Accounts Policies & Procedures requirements;]

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

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

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

[(b) Access to the System by non-System participants is available through the ITS/CAES System as described in the NASD Rule 4700 Series.]

[4903. Order Entry Parameters]

[(a) To Brut Orders—]

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

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

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

[(C) A To Brut Order to sell short shall not be executed if the execution of such order would violate SEC Rule 10a-1. In said

circumstances, the price of the To Brut Order shall be adjusted to \$.01 above the national best bid or offer, and thereafter be processed as if a Reverse Pegged Order.]

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

[(b) Brut Cross Orders—]

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

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

[(B) A Brut Cross Order may also be designated as an Aggressive Cross Order. An Aggressive Cross Order is an order that is displayed in

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

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

[(D) A Brut Cross Order may also be designated as a Directed Cross Order. A Directed Cross Order is an order that is entered into the

System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. After being processed in the Brut System and exhausting available liquidity in the Brut System, the order is automatically routed by Brut to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed Cross Orders directed to the New York Stock Exchange if, after being processed in the Brut System and exhausting available liquidity in the Brut System, such orders will be automatically routed to the ITS/CAES System and INET for potential execution and thereafter, if instructed by the entering party, to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders directed to the New York Stock Exchange shall remain at the New York Stock Exchange until executed or cancelled by the entering party.]

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

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

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

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

[(c) Thru Brut Orders—]

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

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

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

[(d) Reserved]

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

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

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

[(f) Order Size— Any order in whole shares up to 1,000,099 shares may be entered into the System, subject to a dollar volume limitation of \$75,000,000.]

[4904. Entry and Display of Orders]

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

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

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

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

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

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

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

[(3) Minimum Price Variation — The minimum quotation increment for System Securities shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that

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

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

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

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

Round-lots that are subsequently reduced by executions to a mixed lot amount shall also be rounded for to the nearest round-lot amount for purposes of display in the ITS/CAES System. Any odd-lot number of shares that do not get displayed as a result of rounding will remain available for execution, in accordance with the time-priority of their original entry time.]

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

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

[4905. Order Processing]

[(a) Brut Book Order Process]

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

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

[(A) Displayed Orders;]

[(B) Reserve Size; and]

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

[(2) Decrementation — Upon execution, an order shall be reduced by an amount equal to the size of that execution. In the case of orders that have both a

displayed and reserve share component, share amounts shall be reduced starting first with their reserve portions.]

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

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

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

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

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

[(b) Brut Order Routing Process]

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

[(2) With the exception of Thru Brut and Directed Cross Orders that specifically direct to which market center an order is to be routed, if an order for a security is not executed in its entirety in the Brut system 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 other markets accessible through the Brut System router at a price better than the Orders available in the Brut System as a limit order. Routed orders shall be executed pursuant to the rules and regulations of the designation market.]

[(B) In the event an order routed from the Brut System to another market is not executed in its entirety, the remaining portion of the order shall be returned to the Brut System 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 Brut System.]

[(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 the Brut System, the order shall be included in the Brut System 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 is returned to the Brut system. Once an order is placed in the Brut System book it shall not be routed outside the Brut System unless otherwise instructed.]

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

[4906. Clearance and Settlement]

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

[4907. Obligation to Honor System Trades]

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

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

[4908. Compliance with Rules and Registration Requirements]

[(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the System identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration a Participant or any other fitting penalty under the Rules of the Association.]

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

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

[4909. Adjustment of Open Orders]

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

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

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

[4910. Anonymity]

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

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

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

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

[4911. Clearly Erroneous Transactions]

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

[4912. Normal Business Hours]

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

[4913. Limitation of Liability]

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

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

[4914. Confidentiality Between Introducing Broker Function and Brut System]

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

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

[4950. INET SYSTEM]

[4951. Definitions]

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

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

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

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

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

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

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

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

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

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

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

[(k) The term “Extended Day” shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 8:00 p.m. Eastern Time.]

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

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

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

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

displayed in the System book with a new time stamp, its original displayed price, and its non-displayed discretionary price range.]

[(p) The term “Reserve Order” shall mean a limit order that has both a round-lot displayed size as well an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than 100 shares, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the timestamp of its original entry.]

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

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

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

[(t) The term “Minimum Quantity Order” shall mean, for orders so designated, an order that requires that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of Immediate or Cancel.]

[4952. System Participant Registration]

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

[(1) execution of a System Subscriber Agreement;]

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

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

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

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

[(6) In addition to the above, all System Participants shall be members of the Association. Exception: Non-NASD member broker/dealers shall have access to System until the earlier of either September 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.]

[4953. Order Entry Parameters]

[(a) INET System Orders]

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

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

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

[(2) Short Sale Compliance- INET System orders to sell short shall not be executed if the execution of such an order would violate Regulation SHO or Rule

10a-1 under the Exchange Act or, for routed orders, the rules of the applicable self-regulatory organization governing short selling. If an order to sell short is entered that, if executed upon entry, would violate Exchange Act Rule 10a-1, the System will re-price the order to the next whole minimum price variation above the "last sale" on the consolidated tape and enter the order on the book. The System will thereafter monitor the order such that if the order becomes marketable but executing the order would result in a violation of Exchange Act Rule 10a-1, the System will cancel the order off of the book.]

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

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

[4954. Entry and Display of Orders]

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

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

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

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

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

[(B) Exception: Pegged and Market Orders may only be entered between 9:30 a.m. and 4:00 p.m. Eastern Time.]

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

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

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

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

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

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

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

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

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

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

[4955. Order Processing]

[(a) INET Book Order Process]

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

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

[(A) Displayed Orders;]

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

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

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

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

[Example:]

[Buy order resides on INET book at 10.]

[Incoming order to sell priced at 9 comes into INET System]

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

[4956. Routing]

[(a) INET Order Routing Process]

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

[(A) Routing Options]

[The System provides eight routing options for orders. Of these eight, five – DOT Immediate, DOT Alternative, DOT Alternative 2, Reactive Only DOT and DOT Nasdaq- are available for orders ultimately sought to be directed to either the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”). The System also allows firms to send individual orders to the NYSE Direct + System, and to elect to have orders not be sent to the AMEX. The eight System routing options are:]

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

[(ii) DOT Alternative (“DOTA”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution before the destination exchange. Any un-executed portion will thereafter be

sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close. Only limit orders may be used with this strategy.]

[(iii) DOT Alternative 2 (“DOTA2”)— under this option, orders first check the INET book and then other market centers for potential execution. Any portion of the order that remains unexecuted is posted on the INET book until the expiration of the Nasdaq-specified time period at either the order's limit price or, if the limit price would lock or cross the market, at the highest bid or lowest offer that would not lock the market. At the expiration of the period specified by Nasdaq (which will not exceed 30 seconds), any remaining unexecuted portion of the order is sent to the NYSE or AMEX, as appropriate (the destination exchange). DOTA2 orders entered prior to the destination exchange's opening time will be displayed on the INET book until immediately prior to the opening time and then sent to the destination exchange. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.]

[(iv) Reactive Only DOT (“DOTR”)— under this option, orders first check the INET book and then other market centers and the destination exchanges (the NYSE or the AMEX, as appropriate) for potential execution. Any portion of the order that

remains unexecuted is posted on the INET book (unless they were sent to the destination exchange). Subsequently, if an order that was posted on the INET book became locked or crossed by another accessible market center or destination exchange, the System will route the order to the locking or crossing market center or destination exchange. Whenever an order is sent to the destination exchange, it is sent at its original price for potential display and/or execution. This option may only be used for orders with a time-in-force parameter of DAY. Only limit orders may be used with this strategy.]

[(v) Reactive Electronic Only (“STGY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential execution. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.]

[(vi) Electronic Only Scan (“SCAN”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution.

When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System will not route the order to the locking or crossing market center. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.]

[(vii) Aggressive Electronic Only (“SPDY”)—under this option, after checking the INET System for available shares, orders are sent to other available market centers for potential execution. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center. If shares remain un-executed after routing, they are posted on the INET book and are not sent to the NYSE or AMEX. Once on the INET book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center for potential

execution. Market orders with the SPDY designation will, during a locked or crossed market, have their price adjusted by the System to match the best price displayed on the same side of the market as the market order (i.e., a buy order to the bid, a sell to the offer). If the order is for a security eligible for a de minimis exception to the trade-through rule set forth in Section 8 (d)(i) of the ITS Plan, the System will ignore AMEX prices when adjusting the SPDY order. With the exception of the Minimum Quantity order type, all time-in-force parameters and order types may be used in conjunction with this routing option.]

[(viii) DOT Nasdaq ("DOTN")—under this option, after checking the INET System for available shares, orders are sent to other available market centers that are owned by Nasdaq, including the ITS/CAES System and/or Nasdaq's Brut Facility for potential execution before the destination exchange. When checking the INET book, the System will seek to execute at the price it would send the order to a non-INET destination market center as designated by the entering party. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either DAY, IOC, or market-on-open/close.]

[(B) Priority of Routed Orders]

[Regardless of the routing option selected, orders sent by the INET System to other markets do not retain time priority with respect to other orders in INET's System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, short-sale regulation and order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.]

[4957. Clearance and Settlement]

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

[4958. Obligation to Honor System Trades]

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

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

[4959. Compliance with Rules and Registration Requirements]

[(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to it and its use of the System shall subject such Participant to censure, fine, suspension or revocation of its registration as Participant or any other fitting penalty under the Rules of the Association, or such other action, up to and including termination of access to the System.]

[(b) If a Participant fails to maintain a clearing relationship, or to honor its obligations under NASD Rule 4958, it shall have its access to the System restricted until such time as a clearing arrangement is reestablished and/or the Participant meets its obligation to honor System trades.]

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

[4960. Anonymity]

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

[(b) INET shall reveal a Participant's identity in the following circumstances:]

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

[(2) for regulatory purposes or to comply with an order of an arbitrator or court;]

[(3) no later than the end of the day on the date a trade was executed, when the participant's order has been decremented by another order submitted by that same Participant; or]

[(4) if both Participants to the transaction consent.]

[4961. Clearly Erroneous Transactions]

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

[4962. Minimum Quotation Increment]

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

[4963. Normal Business Hours]

[The INET System operates from 7:00 a.m. to 8:00 p.m. Eastern Time on each business day.]

[4964. Limitation of Liability]

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

* * * * *

5000. TRADING OTHERWISE THAN ON AN EXCHANGE

* * * * *

5120. Other Trading Practices

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any NMS Stock as defined in SEC Rule 600(b)(42) (“designated security”) at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in a designated security or creating or inducing a false or misleading appearance with respect to the market in such security:

(1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or

(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or

(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(c) No member shall execute purchases or sales of any designated security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.

(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of a designated security shall be deemed to be a manipulative operation.

(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

(e) No member shall make any statement or circulate and disseminate any information concerning any designated security which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling a designated security, unless such joint account is promptly reported to NASD. The report should contain the following information for each account:

- (1) Name of the account, with names of all participants and their respective interests in profits and losses;
- (2) a statement regarding the purpose of the account;
- (3) name of the member carrying and clearing the account; and
- (4) a copy of any written agreement or instrument relating to the account.

(g) No member shall offer that a transaction or transactions to buy or sell a designated security will influence the closing transaction in that security.

(h) (1) A member may, but is not obligated to, accept a stop order in a designated security.

(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

(2) A member may, but is not obligated to, accept stop limit orders in designated securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

(i) Terms used in this Rule shall have the meaning as defined in Rule 4200.

5130. Obligation to Provide Information

(a) An NASD member operating in or participating in any NASD system or facility 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 NASD when NASD staff makes an oral, written or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., UTP, CTA, CQA and ITS) (as promulgated and amended from time-time).

(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.

* * * * *

5200. NASD Intermarket Trading System/Computer Assisted Execution System

5210. Definitions

(a) No Change.

(b) The term "ITS Plan" shall mean the plan agreed upon by the ITS participants, as from time to time amended in accordance with the provisions therein, and approved by

the Commission pursuant to Section 11A(a)(3)(B) of the Act and SEC Rule [11Aa3-2]608 thereunder.

(c) through (d) No Change.

(e) The term "ITS/CAES Market Maker" shall mean a member of the Association that is registered as a market maker with the Association for the purposes of participation in ITS through CAES with respect to one or more specified ITS securities in which he is then actively registered. The term "ITS/CAES Market Maker" shall also include a member of the Association that meets the definition of electronic communications network ("ECN"), as defined in SEC Rule [11Ac-1-1(a)(8)]600, or alternative trading system ("ATS"), subject to SEC Regulation ATS Rule 301(b), and has voluntarily chosen to register with [Nasdaq]NASD and meets the terms of registration set forth in the NASD[Nasdaq]-provided agreement linking ECNs and ATSS to the CAES system. Registration as an ITS/CAES Market Maker is mandatory for all registered CQS market makers in securities eligible for inclusion in the ITS/CAES linkage.

(f) The term "Participant Market" shall mean the securities trading floor or system of each participating ITS Exchange and the markets of ITS/CAES Market Makers in ITS securities.

(g) The term "Pre-Opening Application" shall mean the application [of the System] which permits a specialist [or ITS/CAES Market Maker] who wishes to open [his] its market in an ITS Security to obtain pre-opening interests from other specialists [and ITS/CAES Market Makers].

(h) through (i) No Change.

(j) "CAES" means the "Computer Assisted Execution System," the computerized order routing and execution facility for ITS Securities, as from time to time modified or supplemented, that is operated by NASD[The Nasdaq Stock Market, Inc.] and made available to NASD members. CAES functionality is offered through [Nasdaq]NASD pursuant to the Rule 4700 Series.

5220. ITS/CAES Registration

In order to participate in ITS, a market maker or ECN/ATS must be registered with the Association as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a) through (c) No Change.

(d) compliance with the ITS Plan, SEC Rule [11Ac1-1]602 and all applicable Rules of the Association;

(e) through (f) No Change.

(g) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date; and

(h) [election to participate in ITS/CAES through either automatic execution or order delivery. As a part of its contractual obligation required under subsection (i) below, Market Makers choosing order delivery status are required to]satisfactorily

demonstrat[e]ing to NASD[Nasdaq] the technical capacity to properly and timely respond to orders delivered through CAES[; and].

[(i) with respect to order delivery ITS/CAES Market Makers, execution of an addendum to the ITS/CAES Market Maker application agreement at least two business days prior to the requested date of operation.]

* * * * *

5230. ITS Operations

(a) No Change.

(b) Any "commitment to trade," which is transmitted by an ITS/CAES Market Maker to another ITS participating market center through ITS, shall be firm and irrevocable for the period of 5 or 30 seconds [either one or two minutes] (specified in accordance with subparagraph (7) below) following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) through (5) No Change.

(6) specify[:]

(A) a price equal to the offer or bid price then being furnished by the destination Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively; or

(B) No Change.

[(C) that the commitment is a commitment to trade "at the market;"]

(7) specify [either one minute or two minutes]IOC or IOX as the time period. The ITS time period will then be based on the minimum time in force the ITS Participant Exchange accepts (5 or 30 seconds), during which the commitment shall be irrevocable[, but if the time period is not specified in the commitment, a two minute period shall be assumed]. It should be noted that the period of time represented by these designations may be changed in the future by action of the ITS Operating Committee, whose decision as to the applicable period shall be binding upon ITS/CAES Market Makers;

(8) No Change.

(c) If a commitment to trade is directed to an ITS/CAES Market Maker, and the execution of such commitment exhausts the size of the quotation being displayed by the ITS/CAES Market Maker, then such ITS/CAES Market Maker's quote shall be refreshed in accordance with Rule 4710(b)(1)(C). [placed in a functional excused withdrawal state pending the input of a new two-sided quotation with size into the Association's Consolidated Quotation Service.] The new two-sided quotation required of the ITS/CAES Market Maker will be entered as promptly as possible into the Association's Consolidated Quotation Service, but in no event later than 15 seconds.

(d) No Change.

5240. Reserved [Pre-Opening Application — Opening by ITS/CAES Market Maker]

[The pre-opening application enables an ITS/CAES Market Maker or ITS Participant Exchange in any participant market who wishes to open his market in an ITS Security to obtain through the ITS System or CAES, any pre-opening interest of an ITS

Participant Exchange or other ITS/CAES Market Makers registered in that security and/or market makers in other participant markets.]

[(a) Notification Requirement — Applicable Price Change, Initial Notification]

[(1) Whenever an ITS/CAES Market Maker, in an opening transaction in any ITS/ CAES Security, anticipates that the opening transaction will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" (as defined below), he shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Thereafter, the ITS/CAES Market Maker shall not open the security in his market until not less than three minutes after his transmission of the pre-opening notification. The "applicable price changes" are:]

[Security]	[Consolidated Closing Price]	[Applicable Price Change (More Than)]
[Network A]	[Under \$15]	[1/8 point]
	[\$15 or over]	[1/4 point ¹]
[Network B]	[\$5 or over]	[1/8 point]
	[Under \$5]	[1/4 point ²]

¹ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an

individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one point.]

¹² If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two points.]

[For transactions involving securities trading in decimal-based increments, the "applicable price changes" are:]

[Security]	[Consolidated Closing Price]	[Applicable Price Change (More Than)]
[Network A]	[Under \$15]	[\$0.10]
	[\$15 or over]	[\$0.25 ³]
[Network B]	[Under \$5]	[\$0.10]
	[\$5 or over]	[\$0.25 ⁴]

¹³ If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 dollars and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.]

¹⁴ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is one dollar.]

[(2) A pre-opening notification shall:]

[(A) be designated as a pre-opening notification (POA);]

[(B) identify the ITS/CAES Market Maker and the security involved; and]

[(C) indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:]

[POA MMID/XYZ]

[(3) The price range shall not exceed the "applicable price range" shown below:]

[Security]	[Consolidated Closing Price]	[Applicable Price Range]
[Network A]	[Under \$50]	[1/2 point]
	[\$50 or over]	[1 point ⁵]
[Network B]	[Under \$10]	[1/2 point]
	[\$10 or over]	[1 point ⁶]

¹⁵ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

¹⁶ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[For transactions involving securities trading in decimal-based increments, the price range shall not exceed the "applicable price range" shown below:]

[Security]	[Consolidated Closing Price]	[Applicable Price Range]
[Network A]	[Under \$50]	[\$0.50]
	[\$50 or over]	[\$1.00 ⁷]
[Network B]	[Under \$10]	[\$0.50]
	[\$10 or over]	[\$1.00 ⁸]

¹⁷ If the previous day's consolidated closing price of an ITS security exceeded \$100 dollars and the Security does not underlie an

individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

- ¹⁸ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Deposit Receipt, Index Funds Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange the "applicable price change" is two dollars.]

[The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 1/8–5/8 price range would be permissible if the previous day's consolidated closing price were 1/8 or 5/8, but not if the closing price were 1/4, 3/8 or 1/8).]

[For transactions involving securities trading in decimal-based increments, the price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (e.g., a 40.15–40.65 price range would be permissible if the previous day's consolidated closing price were 40.15–40.65, but not if the closing price were within the price range 40.16–40.64).]

[(b) Subsequent Notifications]

[If, after sending a pre-opening notification, the situation in an ITS/CAES Market Maker's market changes he may have to issue a subsequent pre-opening notification. The three situations requiring subsequent notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After

sending a subsequent notification, the ITS/CAES Market Maker shall wait either (1) one minute or (2) until the balance of the original three-minute waiting period expires whichever is longer, before opening his market (i.e., if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the ITS/CAES Market Maker must wait for the rest of the period to pass before opening his market).]

[(1) Increase or Decrease in Applicable Price Range]

[Where, prior to the ITS/CAES Market Maker's opening of his market in the security, his anticipated opening price shifts so that it (A) is outside of the price range specified in his pre-opening notification but (B) still represents a change from the previous day's consolidated closing price of more than the applicable price change, he shall issue a replacement pre-opening notification (an "additional" notification) through the system before opening his market in the security. An additional notification contains the same kind of information as is required in an original pre-opening notification.]

[(2) Shift to within Applicable Price Change Parameter]

[(A) The ITS/CAES Market Maker shall, by issuing a "cancellation" notification through the system, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he anticipates opening his market shifts so that it (i) is outside of the price range specified in his pre-opening notification but (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.]

[(B) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price (i) may or may not be outside of the price range specified in the pre-opening notification and (ii) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.]

[Example:]

[CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30–30 1/2; 30 1/8–30 5/8; or 30 1/4–30 3/4. It is then determined that the stock will open at 29 3/4 or 29 7/8. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at 30, 30 1/8, or 30 1/4, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).]

[Example for Decimal-Based Securities:]

[CTA close at 30. Pre-Opening Notification sent with a price range at or within the following range: 30.10–30.60 It is then determined that the stock will open at a price within the range of 29.75 to 29.99. Under paragraph (b)(2)(A), the specialist "shall" send cancellation notification. If it is subsequently determined that stock will open at a price within the range of 30–30.25, the specialist need not reindicate stock pursuant to paragraph (b)(2)(B).]

[(3) Participation as Principal Precluded ("Second Look")]

[If a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g., his responding principal interest is to sell at a price 1/8 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the price and size at which he could participate as principal (i.e., in the parenthetical example above, the total amount of the security that he would have to sell at the 1/8-better price to permit the opening transaction to occur at that price).]

[For securities trading in decimal-based increments, if a responding market maker who has shown in his pre-opening response interest as a principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (e.g. his responding principal interest is to sell at a price .01 or more below the opening price established by paired agency orders), the ITS/CAES Market Makers shall send a "second look" notification through the System, notifying such responding market maker of the .01 price and size at which he could participate as principal (i.e., the parenthetical example above, the total amount of the security that he would have to sell at the .01 better price to permit the opening transaction to occur at that price).]

[(c) Tape Indications]

[If the CTA Plan or the Association's rules requires or permits that an "indication of interest" (i.e., an anticipated opening price range) in a security be furnished to the

consolidated last sale reporting system prior to the opening of trading or the reopening of trading following a halt or suspension in trading in one or more ITS Securities, then the furnishing of an indication of interest in such situations shall, without any other additional action required of the ITS/CAES Market Maker, (1) initiate the pre-opening process, and (2) if applicable, substitute for and satisfy the requirements of paragraphs (a), (b)(1), and (b)(2) (while the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this rule, an ITS/CAES Market Maker should also transmit the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation, the ITS/CAES Market Maker shall not open or reopen the security until not less than three minutes after his transmission of the opening or reopening indication of interest. For the purpose of paragraphs (b)(3), (d), (f), and (g) through (i), "pre-opening notification" includes an indication of interest furnished to the consolidated last sale reporting system.]

[(d) Pre-Opening Responses — Decision on Opening Transaction]

[Subject to paragraph (e), If an ITS/CAES Market Maker who has issued a pre-opening notification receives "pre-opening responses" through the system containing "obligations to trade" from market makers in other Participant markets ("responding market makers"), he shall combine those obligations with orders he already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the ITS/CAES Market Maker has received more than one pre-opening response from a Participant market, he shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response, whether or not the most recent response expressly cancels the preceding

response(s). An original or revised response received after the ITS/CAES Market Maker has effected his opening transaction shall be to no effect.]

[(e) Pre-Opening Responses from Open Markets]

[(1) An ITS/CAES Market Maker must accept only those pre-opening responses sent to the Association by market makers in other participant markets prior to the opening of their markets for trading in the security. Following a halt or suspension in trading declared by the Association in an ITS Security, an ITS/CAES Market Maker must accept only those pre-opening responses sent by market makers to the Association from other participant markets that halted trading in the security contemporaneously with the Association and that had not resumed trading in the security at the time the pre-opening response was sent.]

[(2) In the event that one or more market makers from participant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in the security contemporaneously with the Association, or has already resumed trading in the security, respond to a pre-opening notification in that security, the ITS/CAES Market Maker need not, but may in his discretion, accept such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or, with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in the Participant market sending a pre-opening response but prior to the opening or reopening transaction in ITS/CAES, the market maker who sent the pre-opening response to the Association must confirm the pre-opening response by sending an

administrative message through the system stating that the response remains valid. If the market maker fails to so confirm the pre-opening response, the ITS/CAES Market Maker need not, but may in his discretion, accept the original response for the purpose of inclusion in the opening or reopening transaction.]

[(f) Allocation of Imbalances]

[Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the ITS/CAES Market Maker may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the ITS/CAES Market Maker shall allocate the remaining imbalance (which may be greater than 50 percent if the ITS/ CAES Market Maker elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself to take or supply as principal at the opening price in his pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph, multiple responding market makers in the same ITS Security in the same Participant market shall be deemed to be a single responding market maker.]

[(g) Treatment of Obligations to Trade]

[In receiving a pre-opening response, an ITS/CAES Market Maker shall accord to any obligation to trade as agent included in the response the same treatment as he would to an order entrusted to him as agent at the same time such obligation was received.]

[(h) Responses Increasing the Imbalances]

[An ITS/CAES Market Maker shall not reject a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.]

[(i) Reports of Participation]

[Promptly following the opening in any security as to which an ITS/CAES Market Maker issued a pre-opening notification, the ITS/CAES Market Maker shall report to each Participant responsible for a market in which one or more responding market makers are located (1) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof, or (2) if the responding market maker(s)'s response included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.]

5250. Reserved. [Pre-Opening Application — Openings on Other Participant Markets]

[(a) Pre-Opening Responses]

[Whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him

("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40 3/8), reflected on a netted share basis.]

For securities trading in decimal-based increments, whenever an ITS/CAES Market Maker who has received a pre-opening notification from another ITS/CAES Market Maker or ITS Participant Exchange as provided in the ITS Plan in any ITS Security as to which he is registered as an ITS/CAES Market Maker wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he may do so by sending obligations to trade-through the System to such Participant market in a pre-opening response. A pre-opening response shall be designated as a pre-opening response (POR), identify the security, and show the ITS/CAES Market Maker's buy and/or sell, interest (if any), both as principal for his own account ("P") and as agent for orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40.40), reflected on a netted share basis.]

[The pre-opening response shall be formatted as follows:]

[POR (MMID) BUY (SELL) A-P 40 3/8]

[For securities trading in decimal-based increments the pre-opening response shall be:]

[POR (MMID) BUY (SELL) A-P 40.40]

[The response may also show market orders separately.]

[(b) Revised Responses]

[An ITS/CAES Market Maker may cancel or modify his pre-opening response by sending through the System a revised response that cancels the obligations to trade

contained in his original response and, if a modification is desired, that substitutes new obligations to trade stating the ITS/CAES Market Maker's aggregate interest (i.e., his interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.]

[(c) Pre-Opening Notification from Other Markets]

[No ITS/CAES Market Maker whether acting as principal or agent, shall send an obligation to trade, commitment to trade or order in any security through the System to any other participant market, prior to the opening of trading in such security on such other market (or prior to the resumption of trading in such security on such other market following the initiation of a halt or suspension in trading in the security) until a pre-opening notification as to such security has been issued from such other market or a quotation has been disseminated from such other market pursuant to SEC Rule 11Ac1-1. No ITS/CAES Market Maker that has opened for trading or, with respect to a halt or suspension of trading initiated by another Participant Market, did not halt trading in the security reasonably contemporaneously with the Participant Market or resumed trading during such trading halt or suspension, shall respond to a pre-opening notification.]

[(d) Sole Means of Pre-Opening Routing]

[Once a pre-opening notification as to any security is received by the ITS/CAES Market Maker through the System, the ITS/CAES Market Makers in such security shall

submit obligations to trade that security as principal for his own account to the market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his own account to such market for participation at the opening in that market by any other means. However, this restriction shall not apply to any order sent to such market by the ITS/CAES Market Maker prior to the issuance of the pre-opening notification.]

[(e) Duration of Obligations to Trade]

[Responses to pre-opening notifications shall be voluntary, but each obligation to trade that an ITS/CAES Market Maker includes in any pre-opening response, or in any modification of a pre-opening response, shall remain binding on him, until the security has opened in the market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such market, and until a subsequent cancellation or modification thereof has been received in such market.]

[(f) Request for Participation Report]

[The ITS Plan anticipates that an ITS/CAES Market Maker who has sent one or more obligations to trade in response to a pre-opening notification will request a report through the System as to his participation if he does not receive a report as required promptly following the opening. If, on or following trade date, he does request a report through the System as to his participation before 4:00 p.m. Eastern Time, and he does not receive a response by 9:30 a.m. Eastern Time on the next trading day, he need not accept a later report. If he fails to so request a report, he must accept a report until 4:00 p.m. Eastern Time on the third trading day following the trade date (i.e., on T+3). The Association does not intend this paragraph to relieve him of the obligation, when he does

not receive a report, to request a report as soon as he reasonably should expect to have received it.]

5260. System Trade and Quotations

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5262. Trade-Throughs

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES security, shall avoid purchasing or selling such security, whether as principal or agent, at a price which is lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES Market Maker ("trade-through"), unless the following conditions apply:

(1) through (3) No Change.

(4) the bid or offer that is traded-through is being displayed from a Market Center whose members are relieved of their obligations under SEC Rule [11Ac1-1(C)(2)] 602 with respect to such bid or offer;

(5) through (8) No Change.

(9) The transaction involves DIAMONDS, and SPDRs, and the execution occurs at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This exemption shall apply for a pilot period [ending June 4, 2003, or for such other period] as specified by the SEC.

(b) through (c) No Change.

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5263. Locked or Crossed Markets

(a) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security [that makes] is prohibited from entering a bid (offer) for such security at a price which equals the offering (bid) price at that time from an ITS Participant Exchange or ITS/CAES Market Maker, which [has created what] is referred to [in this rule] as a "locked market."

(b) A member registered as an ITS/CAES Market Maker in an ITS/CAES Security [that makes] is prohibited from entering a bid (offer) for such security at a price which exceeds (is less than) the offering (bid) price at that time from an ITS Participant Exchange or ITS/CAES Market Maker, which [has created what] is referred to [in this rule] as a "crossed market."

[(c) (1) Unless excused by operation of paragraphs (c)(2) or (d) below an ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with an ITS Participant Exchange or another ITS/CAES Market Maker and that receives a complaint through ITS/CAES or CAES from the party whose bid (offer) was locked or crossed (the "aggrieved party"), the ITS/CAES Market Maker responsible for the locking or crossing offer (bid) shall, as specified in the complaint, either promptly "ship" (i.e., satisfy through ITS/CAES or CAES the locked or crossed bid (offer) up to the size of his locking or crossing offer (bid)) or "unlock" (i.e., adjust his locking or crossing offer (bid) so as not to cause a locked or crossed market). If the complaint specifies "unlock", it may nevertheless ship instead.]

[(2) If there is an error in a locking or crossing bid or offer that relieves the locking or crossing ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1-1 and if the ITS/CAES Market Maker receives a "ship" complaint through ITS/CAES or CAES from the aggrieved party, the locking or crossing ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES or CAES of the error within two minutes of receipt of the complaint. If the locking or crossing ITS/CAES Market Maker fails to so notify the aggrieved party, he shall promptly ship.]

[(d) The provisions of paragraph (c) above shall not apply when:]

[(1) the bid or offer in the ITS Participating market center is for 100 shares;]

[(2) the issuance of the commitment to trade or order referred to above would be prohibited by an NASD rule or by SEC Rule 10a-1 under the Act;]

[(3) the ITS/CAES Market Maker who causes a locked or crossed market is unable to comply with the provisions of paragraph (c) above because of a systems/equipment failure or malfunction;]

[(4) the bid or offer that causes the locked or crossed market is not for a "regular way" contract;]

[(5) the locked or crossed market occurs at a time when, with respect to the ITS Security which is the subject of the locked or crossed market, members of the ITS participating market center to which the commitment to trade would be

sent pursuant to paragraph (c) above are relieved of their obligations under SEC Rule 11Ac1-1(c)(2);]

[(6) the transaction involves (A) purchases and sales effected by ITS/CAES Market Maker's participating in an opening or (reopening) transaction or (B) any "Block Transaction" as defined in the ITS/CAES Rules.]

[(7) the locking or crossing bid or offer no longer prevails at the time the complaint is received by the ITS/CAES Market Maker.]

5264. Block Transactions

(a) through (d) No Change.

(e) Inapplicability. Paragraph (a) above shall not apply under the following conditions:

(1) through (3) No Change.

(4) the bid or offer that is traded through is being displayed from a Market Center whose members are relieved of their obligations under SEC Rule [11Ac1-1(c)(2)]602 with respect to such bid or offer;

(5) No Change.

(6) the better priced bid or offer was being displayed from an ITS participating market center whose members were relieved of their obligations with respect to such bid or offer under SEC Rule [11Ac 1-1(c)(2)]602 pursuant to the "unusual market" exception to SEC Rule [11Ac1-1(b)(3)]602; or

(7) No Change.

5265. Authority to Cancel or Adjust Transactions

(a) In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in Rule 11890 of the Uniform Practice Code[and the Rule 9700 Series], declare any transaction arising out of the use or operation of the ITS/CAES System, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous; and the Association may reallocate stock between ITS/CAES Market Makers to correct an erroneous transaction.

(b) No Change.

5266. Market Participant Identifiers

[(a)] ITS/CAES market makers obligated to maintain a continuous two-sided quotation pursuant Rule 5220(e) shall have that quote displayed and attributed to them by a special market participant identifier ("MPID"). [The first MPID issued to an] ITS/CAES market makers may only use one MPID for purposes of displaying quotes and orders on the system. [shall be referred to as the ITS/CAES market maker's "Primary MPID."]

[(b) For a pilot period ending November 30, 2006, ITS/CAES market makers may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." ITS/CAES market makers may be issued up to nine Supplemental MPIDs. An ITS/CAES market maker may request the use of Supplemental MPIDs for displaying two-sided Attributable Quotes/Orders in Nasdaq for any security in which it is registered and meets the obligations set forth in Rule 5220; an ITS/CAES market maker may not use a Supplemental MPID for displaying one-sided Attributable Quotes/Orders. An

ITS/CAES market maker that fails to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.]

[(c) ITS/CAES market makers that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (b) of this rule are subject to the same rules applicable to the ITS/CAES market maker's first quotation, with two exceptions: (1) the continuous two-sided quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to ITS/CAES market makers' Supplemental MPIDs; and (2) Supplemental MPIDs may not be used by ITS/CAES market makers to engage in passive market making or to enter stabilizing bids.]

[IM-5266-1. Procedures For Allocation of Second Displayable MPIDs]

[Nasdaq has a technological limitation on the number of displayed, attributable quotations in an individual security. Therefore, Nasdaq must consider the issuance and display of Supplemental MPIDs to be a privilege and not a right. Nasdaq has developed the following method for allocating the privilege of receiving and displaying Supplemental MPIDs with attributable display privileges ("display privileges") in an orderly, predictable, and fair manner on a stock-by-stock basis.]

[As described in Rule 5266, Nasdaq will automatically designate an ITS/CAES market maker's first MPID as a "Primary MPID" and any additional MPIDs as "Supplemental MPIDs." ITS/CAES market makers are required to use their Primary MPID in accordance with the requirements of a Primary MPID for listed securities.

Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and SEC rules governing the trading of these securities — including the Intermarket System Plan and the Rule 5200 and 6300 Series. The multiple MPID for exchange-listed securities program creates no exceptions to these obligations. ITS/CAES market makers may also use Supplemental MPIDs to enter non-attributable orders into SIZE.]

[Nasdaq, in conjunction with the NASD, has developed procedures to maintain a high level of surveillance and member compliance with its rules with respect to ITS/CAES market makers' use of both Primary and Supplemental MPIDs to display quotations in Nasdaq systems. If it is determined that one or more Supplemental MPIDs are being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID(s) for all purposes for all securities. In addition, if an ITS/CAES market maker no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use a Supplemental MPID for any purpose in that security.]

[The first priority of Nasdaq's method for allocating the privilege of displaying Supplemental MPID is that each ITS/CAES market maker should be permitted to register to display a single quotation in a security under a Primary MPID before any is permitted to register to display additional quotations under Supplemental MPIDs. If all requests for Primary MPIDs have been satisfied, Nasdaq will then register Supplemental MPIDs to display Attributed Quotes/Orders in that security on a first-come-first-served basis, consistent with the procedures listed below. If Nasdaq comes within ten MPIDs with display privileges of its maximum in a particular security, Nasdaq will temporarily cease

registering Supplemental MPIDs with display privileges in that security and reserve those ten remaining display privileges for ITS/CAES market makers that may register their Primary MPID in that stock in the future. If Nasdaq allocates those reserved display privileges to ITS/CAES market makers requesting Primary MPIDs and then receives additional requests for Primary MPIDs, it will use the procedure described below to re-allocate display privileges to ITS/CAES market makers requesting Primary MPIDs.]

[For any stock in which Nasdaq has reached the maximum number of ITS/CAES market makers registered to display quotations, once each month, Nasdaq will rank each of the ITS/CAES market makers that has more than one Supplemental MPID with display privileges in the stock according to their monthly volume of trading, based on the volume of that ITS/CAES market maker's least used Supplemental MPID with display privileges. Nasdaq will withdraw the display privilege associated with the lowest volume Supplemental MPID of the ITS/CAES market maker in that ranking and assign that privilege to the first ITS/CAES market maker that requested a Primary MPID or Supplemental MPID, with Primary MPIDs always taking precedence. Nasdaq will repeat this process as many times as needed to accommodate all pending requests for Primary and Supplemental MPIDs. If after following this process (or at the outset of the allocation process) no ITS/CAES market maker has more than one Supplemental MPID with display privileges, ITS/CAES market makers will be ranked based upon the volume associated with their Supplemental MPID, and Nasdaq will withdraw the display privilege from the ITS/CAES market maker with the lowest volume Supplemental MPID.]

[ITS/CAES market makers that lose the display privilege associated with a Supplemental MPID will still be permitted to use the Supplemental MPID to enter non-attributable orders into SIZE for that security or any other, and to display additional quotes in stocks in which they are properly registered to do so, subject to the conditions described in the rule and this interpretive material.]

[The objective of the procedure is to re-allocate the display privileges from the least used Supplemental MPIDs to those ITS/CAES market makers requesting Primary or Supplemental MPIDs. For example, assume with respect to security WXYZ ITS/CAES market maker A has nine Supplemental MPIDs with display privileges (which is the maximum – 1 Primary MPID + 9 Supplemental MPIDs = 10 MPIDs with display privileges), ITS/CAES market maker B has three Supplemental MPIDs with display privileges, and ITS/CAES market maker C has three Supplemental MPIDs with display privileges and is requesting a fourth. After conducting the monthly ranking, one of B's Supplemental MPIDs is the least used in WXYZ, C has the next lowest volume Supplemental MPID with display privileges in the security, and A has the next lowest in the security after C (i.e., the order for forfeiting their display privilege is: B, C, then A). Based on this ranking, Nasdaq would re-allocate one of B's display privileges to C. As a result, A keeps its privileges for all nine of its Supplemental MPIDs in WXYZ, C adds a Supplemental MPID with display privileges in the security, and B loses a *display privilege in WXYZ* — B does not lose use of the Supplemental MPID for submitting *non-attributable* orders in WXYZ to SIZE, and it does not lose display privileges in any other security in which it is authorized to use the Supplemental MPID.]

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. CLEARING AND COMPARISON RULES

6110. Definitions

(a) through (h) No Change.

(i) The term “Reporting ECN” shall mean a member of NASD that is an electronic communications network or alternative trading system, as those terms are defined in SEC Rule 600, that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(j) through (l)

(m) The term “System” shall mean the NASD/Nasdaq Trade Reporting Facility for purposes of trades in designated securities as defined in Rule 4200, the trade reporting service of the ITS/CAES System for purposes of eligible securities as defined in Rule 6410, and the OTC Reporting Facility for purposes of OTC Equity Securities as defined in Rule 6600 and Direct Participation Programs as defined in Rule 6910.

(n) No Change.

* * * * *

6130. Trade Report Input

(a) Reportable Transactions

Members shall comply with the Rule 6100 Series when reporting transactions to the System, including executions of less than one round lot if those executions are to be compared and locked-in. All trades that are reportable transactions will be processed [through the National Trade Reporting System] pursuant to an effective transaction

reporting plan; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through the System. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared by the System or reported to DTCC. All transactions in Direct Participation Program securities shall be reported to the System pursuant to the Rule 6900 Series as set forth therein.

(b) through (f) No Change.

* * * * *

6300. Consolidated Quotations Service (CQS)

6310. Reserved

6320. Registration as a CQS Market Maker

(a) Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (CQS) [through The Nasdaq Stock Market] only by an Association member registered with it as a CQS market maker.

(b) No Change.

(c) A CQS market maker registered in a reported security may become registered in additional reported securities by entering a registration request to NASD[via a Nasdaq terminal]. Registration shall become effective at the time the registration request is entered.

(d) No Change.

(e) All [CQS market makers registered in reported securities shall be registered as market makers in the Computer Assisted Execution System (CAES); all] CQS market makers registered in reported securities that are eligible for inclusion in the Intermarket

Trading System/Computer Assisted Execution System (ITS/CAES) shall be registered as market makers in ITS/CAES and shall be subject to the Rule 5200 Series.

6330. Obligations of CQS Market Makers

(a) Pursuant to SEC Rule [11Ac1-1]602, a CQS market maker's quotations in reported securities are required to be firm for the size displayed or, if no size is displayed, for a normal unit of trading. If a market maker displays quotations in a reported security in both a national securities exchange and the Association's CQS System, the market maker shall maintain identical quotations in each system.

(b) No Change.

(c) A CQS market maker shall be obligated to have available in close proximity to the [Nasdaq]NASD terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.

(d) Minimum Price Variation

[(1)]The minimum quotation increment shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected.

[(2) A quotation for a security listed on the New York Stock Exchange or the American Stock Exchange and properly (not in violation of paragraph (1) above) priced in an increment of less than \$0.01 will be adjusted by Nasdaq down (for bids) or up (for offers) to the nearest \$0.01 increment prior to display, execution or routing. A quotation so adjusted will have no price priority over equivalent quotations that did not require adjustment under this paragraph.]

* * * * *

6350. Withdrawal of Quotations

(a) A CQS market maker that wishes to withdraw quotations in a reported security shall contact [Nasdaq MarketWatch]NASD Operations to obtain excused withdrawal status prior to withdrawing its quotations.

(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by [Nasdaq MarketWatch]NASD Operations. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 6431.

6360. Voluntary Termination of Registration

A CQS market maker may voluntarily terminate its registration in a reported security by withdrawing its quotations from [The Nasdaq Stock Market] the ITS/CAES system. A CQS market maker that voluntarily terminates its registration in a reported security may not, however, re-register as a CQS market maker in that security for two (2) business days.

* * * * *

6400. Reporting Transactions in Listed Securities

The provisions of this Rule 6400 Series shall apply to [all] over-the-counter transactions in listed securities that are required to be reported to the Consolidated Tape ("eligible securities"), as provided in the Plan filed by the Association pursuant to SEC Rule [11Aa3-1]601 under the Act ("Plan"). Transactions required or eligible to be reported under this Rule 6400 Series must be reported pursuant to the provisions of Rule 4720. Rule 6420 shall not apply to transactions executed through CAES (Computer Assisted Execution System) or ITS/CAES (Intermarket Trading System/Computer Assisted Execution System) by market makers registered as CQS market makers.

6410. Definitions

(a) Terms used herein shall have the meaning as defined in the By-Laws and Rules of the Association, SEC Rule [11Aa3-1]601 and the Plan, unless otherwise defined herein.

(b) Reserved.

(c) No Change.

(d) “CQS securities” or “Eligible securities” means all securities that are eligible for inclusion in the CQ Plan and reported to the Consolidated Tape in accordance with the CTA Plan. These securities include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges that are eligible for reporting on the Consolidated Tape. [common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is contained in Rule 6450.]

(e) through (j) No Change.

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) (A) Registered Reporting Members shall transmit to NASD[Nasdaq], within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late.

(B) Registered Reporting Members shall transmit to NASD[Nasdaq], within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise

than on a national securities exchange between 4:00 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds after execution must be designated as .T trades. Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis the following day between 8:00 a.m. and 6:30 p.m. Eastern Time.

(2) (A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit to NASD[Nasdaq], or by telephone to the [Nasdaq] NASD Operations Department if the [Nasdaq] NASD reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late.

(B) Non-registered Reporting Members shall, within 90 seconds after execution, transmit to NASD [Nasdaq], or by telephone to the [Nasdaq] NASD Operations Department if the [Nasdaq] NASD reporting service is unavailable due to system or transmission failure, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within

90 seconds after execution must be designated as .T trades. Transactions not reported by 6:30 p.m. shall be reported on an "as of" basis the following day between 8:00 a.m. and 6:30 p.m.

(3) (A) No Change.

(B) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to [Nasdaq] NASD is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active).

Transactions that can be reported to the [Nasdaq] NASD, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(4) through (5) No Change.

(6) All members shall report to NASD [Nasdaq] using the .W modifier transactions at prices based on average-weighting or other special pricing formulae unrelated to the current or closing price of the security on the primary market.

(7) [Nasdaq] NASD will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to [Nasdaq] NASD that contain the time of execution, but that do not contain the appropriate modifier.

(8) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report

shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.^[1]

[¹ Implementation of the .PRP modifier for listed securities is delayed until June 6, 2005.]

(9) No Change.

(10) To identify pre-opening and after-hours trades reported late, [Nasdaq]NASD shall convert the .T modifier to .ST for any report submitted to NASD[Nasdaq] more than 90 seconds after execution.

(b) and (c) No Change.

(d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:

(1) through (2) No Change.

(3) (A) No Change.

(B) Exception: A "riskless" principal transaction in which a member, after having received an order to buy, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down,

commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to [Nasdaq] NASD:

(i) through (ii) No Change.

[A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.]

Example:

BUY as principal 100 shares from another member at 40 to fill an existing order;

SELL as principal 100 shares to a customer at 40 plus mark-up of \$12.50;

REPORT 100 shares at 40 by submitting to [Nasdaq] NASD either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:

(1) No Change.

(2) either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order, the order will be reported by the exchange. A member may, however, submit to NASD a clearing only report or a non-tape, non-clearing report for the "riskless" leg of a riskless principal transaction where the initial leg has been reported on or through an exchange. Any such report submitted to

NASD shall comply with all applicable requirements for trade reports as set forth in this Rule 6420.

Example:

BUY as principal 100 shares on an exchange at 40 to fill an existing order;

DO NOT REPORT this leg (will be reported by exchange).

SELL as principal 100 shares to a customer at 40 plus a mark-up of

\$12.50.

[DO NOT REPORT (will be reported by exchange).]

A member MAY submit to NASD either a non-tape, non-clearing report or a clearing-only report for this leg marked with a "riskless principal" capacity indicator.

(e) No Change.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled by [Nasdaq]NASD staff in accordance with Rule 11890, members shall contact NASD Operations to report [to Nasdaq] the cancellation of any trade previously submitted to [Nasdaq] NASD. The member responsible under Rule 6420 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through an [Nasdaq]NASD system that automatically reports trades [to Nasdaq], the member that would have been required by Rule 6420 to report the trade (but for the trade being reported

automatically by the [Nasdaq]NASD system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) Deadlines for Reporting Cancelled Trades

(A) through (F) No Change.

(G) For purposes of determining the deadline by which a trade cancellation must be reported to [Nasdaq] NASD pursuant to subparagraph (f) of this rule the term "cancelled" shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

[**Cross Reference**–IM-4632, Transaction Reporting]

* * * * *

[6440. Trading Practices]

[(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.]

[(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in an eligible security or creating or inducing a false or misleading appearance with respect to the market in such security:]

[(1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or]

[(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or]

[(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.]

[(c) No member shall execute purchases or sales of any eligible security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.]

[(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.]

[(1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of an eligible security shall be deemed to be a manipulative operation.]

[(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.]

[(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.]

[(e) No member shall make any statement or circulate and disseminate any information concerning any eligible security which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.]

[(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling an eligible security, unless such joint account is promptly reported to the Association. The report should contain the following information for each account:]

[(1) Name of the account, with names of all participants and their respective interests in profits and losses;]

[(2) a statement regarding the purpose of the account;]

[(3) name of the member carrying and clearing the account; and]

[(4) a copy of any written agreement or instrument relating to the account.]

[(g) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.]

[(h) (1) A member may, but is not obligated to, accept a stop order in an eligible security.]

[(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.]

[(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.]

[(2) A member may, but is not obligated to, accept stop limit orders in eligible securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.]

6450. Reserved. [Eligible Securities]

[Transactions required to be reported on the Consolidated Tape (eligible securities) include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed on the American Stock Exchange and/or the New York Stock Exchange and the following securities listed on regional stock exchanges.]

[SYMBOL]	[SECURITY]
[ALK\$]	[Alaska Airlines \$2.77 Pfd.]
[ADN]	[Alden Electronic]
[AFI\$D]	[Amer. Financial Corp. Pfd.D]
[AFI\$E]	[Amer. Financial Corp. Pfd.E]
[AFI\$F]	[Amer. Financial Corp. Pfd.F]

[AFI\$G]	[Amer. Financial Corp. Pfd.G]
[AFI\$H]	[Amer. Financial Corp. Pfd.H]
[BPP]	[Ballys Park Place]
[BSI]	[Bastian Inds., Inc.]
[BSI\$]	[Bastian Inds., Inc. \$1.00 Pfd]
[BBM]	[Berkeley Bio Medical]
[CSW]	[Canada Southern Petroleum]
[CNO]	[Casco Northern Corp.]
[CJI]	[Central Jersey Industries]
[CTE]	[Columbia Chase Corp.]
[DCT]	[DC Trading Development Corp.]
[EDG]	[Enterprise Devel. Group, Inc.]
[GEO]	[Geothermal Resources]
[GLR]	[Grolier Inc.]
[HWK]	[Hardwicke Companies, Inc.]
[MOD]	[Modine Manufacturing Company]
[OKC]	[OKC Limited Partnership]
[OGS]	[O's Gold Seed Company]

[PRI]	[Pacific Resources]
[PJH]	[Piper Jaffray, Inc.]
[PRB]	[Provident Bancorp, Inc.]
[REL.Z]	[Reliance Group 87 Wts.]
[SOU\$A]	[Southern Cal Gas 6% A Pfd.]
[SOU\$Q]	[Southern Cal Gas 6% Pfd.]
[SYN\$B]	[Syntex Corp. Pfd.B]
[TEP\$]	[Tucson Elec. Power Pfd.]
[UTC]	[United Canso Oil and Gas]
[WH]	[White Motor Corporation]

* * * * *

11890. Clearly Erroneous Transactions

[(a) Authority to Review Transactions Pursuant to Complaint of Market Participant]

[(1) Scope of Authority.]

[(A) Subject to the limitations described in paragraph (a)(2)(C) below, officers of Nasdaq designated by its President shall, pursuant to the procedures set forth in paragraph (a)(2) below, have the authority to review any transaction in a non-Nasdaq exchange-listed security arising out of the use or operation of any execution or communication system

owned or operated by Nasdaq and approved by the Commission; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous. If the officer determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous if the transaction is eligible for review under the Rule and if there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2) Procedures for Reviewing Transactions]

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

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

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

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

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

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

[(ii) For trades in non-Nasdaq exchange-listed securities executed between the time when the primary market for the security first posts an executable two-sided quote for its regular market trading session and 4:00 p.m. Eastern Time, the price of transaction to buy (sell) that is the subject of the complaint is greater than (less than) the best offer (best bid) by an amount that equals or exceeds the minimum threshold set forth below:]

[Inside Price]	[Minimum Threshold]
[\$0 – \$0.99]	[\$0.02 + (0.10 x Inside Price)]
[\$1.00 – \$4.99]	[\$0.12 + (0.07 x (Inside Price – \$1.00))]
[\$5.00 – \$14.99]	[\$0.40 + (0.06 x (Inside Price – \$5.00))]
[\$15 or more]	[\$1.00]

[For a transaction to buy (sell) a non-Nasdaq exchange-listed security, the inside price shall be the national best offer (best bid) at the time that the first share of the order that resulted in the disputed transaction was executed. A “non-Nasdaq exchange-listed security” means a security for which transaction reports are disseminated under the Consolidated Tape Association Plan. The “primary market” for a non-Nasdaq exchange-listed security is the market designated as the primary market under the Consolidated Tape Association Plan.]

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

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

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

[(G) Once a party has applied to Nasdaq for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties to

the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(1), or (ii) the complainant withdraws its application for review prior to the notification of counterparties pursuant to paragraph (a)(2)(D).]

[(b)](a) Procedures for Reviewing Transactions on NASD's [or Nasdaq's

]Own Motion

[(1) In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction in non-Nasdaq exchange-listed securities arising out of or reported through any such quotation, execution, communication, or trade reporting system. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary

circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.]

[(2)] In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction [in a Nasdaq-listed security or an OTC equity security, as defined in Rule 6610,] arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue.

[(c)](b) Review by the [Market Operations Review Committee ("MORC") or the]Uniform Practice Code ("UPC") Committee

(1) [Subject to the limitations described in paragraph (c)(2), a member, or person associated a member may appeal a determination made under paragraph (a) to the MORC.] A member or person associated a member may appeal a determination made under [paragraph (b)(1) to the MORC, or a determination made under] paragraph (a)[(b)(2)] to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by [Nasdaq or]NASD[, as applicable,] within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if [Nasdaq or]NASD notifies the parties of action taken pursuant to paragraph (a)[(b)] after 4:00 p.m., the appeal must be received by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the [appropriate] UPC Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. [Subject to the limitations described in paragraph (c)(2),] [o]Once a party has appealed a determination to the [appropriate] UPC Committee, the determination shall be reviewed and a decision rendered, unless

(i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph ~~(b)(1)~~(c)(1)]. Upon consideration of the record, and after such hearings as it may in its discretion order, [the MORC or]the UPC Committee, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

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

[(3)](2) The decision of the UPC [a] Committee pursuant to an appeal, or a determination by an[a Nasdaq or] NASD officer that is not appealed, shall be final and binding upon all parties and shall constitute final action on the matter in issue. Any determination by an[a Nasdaq or] NASD officer pursuant to paragraph (a) [or (b)] or any decision by the UPC [a] Committee pursuant to paragraph

(b)[(c)] shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

[(d)](c) Communications

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

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

IM-11890-1. Refusal to Abide by Rulings

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

IM-11890-2. Review by Panels of [the MORC or]the UPC Committee

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

[IM-11890-3. Application of Rule 11890(a)(2)(C)]

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

[ABC, a non-Nasdaq exchange-listed security, has an inside market of (bid) \$12.00 – \$12.05 (ask). Market Maker A (MMA) enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order ‘sweeps’ the Nasdaq order file, which reflects 1,000 shares of

liquidity offered at each of ten prices ranging from \$12.05 to \$12.95. Executions occur, moving through the depth of file, as follows:]

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

[The inside offer at the time the first share of the order was executed is \$12.05, so the minimum price deviation threshold is determined using the following formula:]

$$[\$0.40 + (0.06 \times (\text{Inside Price} - \$5.00)) = \$0.40 + (0.06 \times (\$12.05 - \$5.00)) = \$0.82]$$

[Thus, to be eligible for review, a transaction must be at a price that is at least \$0.82 higher than the original best offer price (i.e., $\$12.05 + \$0.82 = \$12.87$). MMA could petition for review of trades #9 and #10, priced at \$12.90 and \$12.95 respectively, but trades #1 through #8 would not be eligible for review. The sole basis for an appeal to the MORC of the determination that trades #1 through #8 are not eligible for review would be an assertion of a mistake of material fact. For example, an appeal could be based upon an assertion that the Nasdaq officer had made an arithmetical error in determining the

minimum price deviation threshold, or had erred in determining the applicable inside price.]

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