

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53583; File No. SR-NASDAQ-2006-001)

March 31, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Market Center

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 7, 2006, The NASDAQ Stock Market LLC (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 29, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes the following substantive and technical changes to the original proposal: (1) eliminates from the original filing Nasdaq Rule 4611(d), Nasdaq’s proposal to prohibit members from charging access fees triggered by the execution of a quotation within the System; (2) clarifies in Nasdaq Rules 4751(f)(6), 4755(a)(4) and 4757(a) that members must designate orders as Intermarket Sweep Orders (“ISOs”) rather than have the system automatically default to treat orders as ISOs absent other designation and enumerates in Nasdaq Rule 4751(f)(6) members’ obligations when entering ISOs into the system; (3) amends Nasdaq Rule 4613(e), Nasdaq’s rule for implementing the locked and crossed markets provisions of Rule 610 of Regulation NMS under the Act, to track more closely the language developed by the Commission staff in consultation with other exchanges; (4) modifies several examples of system processing throughout the filing; (5) groups within Nasdaq Rule 4751(d) all definitions related to system quotation functionality; (6) modifies Nasdaq Rule 4756(c) to clarify the display and non-display of trading interest within the system and adds language in Nasdaq Rule 4756(c)(4) to the effect that Nasdaq has procedures in place to identify its quotes as manual or automated and to notify its members of the status of its quotations; (7) modifies Nasdaq Rule 4751(h)(5) to clarify the processing of MIOC Orders; (8) states that the Nasdaq Board has approved the submission of this proposed rule change; (9) eliminates the requirement in Nasdaq Rule 4612(d) that Participants append a geographic identifier for their separate trading locations; (10) inserts Nasdaq Rule 4620(b)(4) to clarify that Nasdaq will reveal contra party information at the end of the day when a member trades

change, as amended, from interested persons.

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

Nasdaq is proposing to integrate the operations of the existing Nasdaq Market Center, along with Nasdaq's Brut Facility and Nasdaq's INET Facility to create the fairest, fastest, most efficient and most transparent system in Nasdaq's 35-year history. This integration will benefit investors by creating a single pool of liquidity from three, thereby increasing order interaction, and execution speed and fill rates. Integration will enable Nasdaq to further reduce the cost to investors of executing trades on Nasdaq by, for example, reducing the cost for subscriber connectivity and increasing the efficiency of the resulting facility.

Nasdaq is currently on schedule to launch the proposed integrated system timely to comply with the requirements the Fair Access and Order Protection rules, Rules 610 and 611 of Regulation NMS under the Act ("Regulation NMS"). The integrated system will be designed to enable Nasdaq to operate its execution system as that of a national securities exchange rather than as an association, pursuant to the Commission order, dated January 13, 2006, approving Nasdaq's application to register as a national securities exchange.⁴ Below is the text of the proposed rule change. Proposed new language is underlined and proposed deletions are in [brackets].

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4120. Trading Halts

(a) Authority to Initiate Trading Halts

with its own quote or order, unless the member requests not to receive that information; and (11) makes various grammatical and syntactic modifications.

⁴ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) ("January 13, 2006 Order").

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

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

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

(3) halt trading [by] on Nasdaq: (i) [ITS/CAES Market Makers] in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx (“operational trading halt”); or (ii) [Nasdaq market makers] in a security listed on Nasdaq, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. [ITS/CAES Market Makers and] In the event that Nasdaq halts trading, Nasdaq Participants [Market Makers] may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b); or

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

(5) halt trading in a security listed on Nasdaq when Nasdaq requests from the

issuer information relating to:

(A) material news;

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

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

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

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

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

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

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

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

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

(b) Procedure for Initiating a Trading Halt

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

(2) Notification shall be provided directly to Nasdaq's MarketWatch Department by telephone, facsimile, or other compatible means of electronic communication.⁵ Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

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

(4) Should Nasdaq determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective at the time

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

specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the commencement of a trading halt through major wire services.

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

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

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

(7) (a) A trading halt initiated under Rule 4120(a)(1), (4), (5) or (6) shall be

terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. At the conclusion of the 5-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for an additional 1-minute period pursuant to subparagraph (c) below. There shall be a period of between zero and 15 seconds (randomly selected) at which point the Display Only Period shall end and trading shall resume pursuant to Rule 4753

(b) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only P[eriod] during which market participants may enter quotes and orders in that security in Nasdaq systems. At the conclusion of the 15-minute Display Only P[eriod], [the halt shall be terminated and the security released for trading.] the security shall be released for trading unless Nasdaq extends the Display Only Period for one, two or three additional 5-minute Display Only Periods pursuant to subparagraph (c) below. At the conclusion of the Display Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4753.

(c) If at the end of a Display Only Period, Nasdaq detects a liquidity imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraphs (a) and (b) above. Liquidity Imbalances shall be established when 1) the Current Reference Prices, as defined in Rule 4705(a)(2),

disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by greater than (i) 10 percent or (ii) 50 cents (whichever is greater), or 2) all buy or sell market orders will not be executed in the cross.

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4600. REQUIREMENTS FOR NASDAQ MARKET MAKERS AND OTHER NASDAQ MARKET CENTER PARTICIPANTS

4601. Scope

Unless otherwise specified, the rules set forth in this 4600 Series apply only to the quoting and trading of System [Nasdaq] securities via the Nasdaq Market Center. [Participation in the Nasdaq Market Center as an ITS/CAES Market Maker shall be conditioned upon the initial and continuing compliance with the requirements set forth in the Rule 5200 Series. Participation in the Nasdaq Market Center as a UTP Exchange shall be conditioned upon the UTP Exchange's initial and continuing compliance with the requirements set forth in Nasdaq Rule 4710(e). Terms used in the Rule 4600 Series shall have the meaning as defined in Rule 4701.]

4602 Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on a national securities exchange other than Nasdaq.

(a) The term "Non-Nasdaq ITS Participant Market" shall mean a participant in the ITS Plan that is a national securities exchange (other than Nasdaq) or a national securities association.

(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 608 thereunder.

(c) The term “ITS Security” shall mean any security which may be traded through the ITS System by Nasdaq.

(d) The term “ITS System” shall mean the communications network and related equipment that links electronically the Non-Nasdaq ITS Participant Markets and Nasdaq as described in the Plan.

(e) The term “Nasdaq Market Maker” when used in reference to ITS Securities, shall mean a member of Nasdaq that is registered as a market maker with Nasdaq for the purposes of participation in ITS with respect to one or more ITS securities in which it is then actively registered. The term “Nasdaq Market Maker” shall also include a member of Nasdaq that meets the definition of electronic communications network (“ECN”), as defined in SEC Rule 600, or alternative trading system (“ATS”), subject to SEC Regulation ATS Rule 301(b), and has voluntarily chosen to register with Nasdaq and meets the terms of registration set forth in Rule 4752.

(f) The term “Participant Market” shall mean the securities market of each participating Non-Nasdaq ITS Market and the markets of Nasdaq in ITS securities.

(g) A “Third Participating Market Center Trade-Through,” as that term is used in this Rule, occurs whenever Nasdaq initiates the purchase of an ITS Security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade-through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS Participant Market as reflected by the offer (bid)

then being displayed by Nasdaq Market Makers from such other market center. The member described in the foregoing sentence is referred to in this Rule as the “member who initiated a third participating market center trade-through.”

(h) “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 Nasdaq and made available to Nasdaq members. CAES functionality is offered through the Nasdaq Market Center pursuant to the Rule 4750 Series.

4610. Registration and Other Requirements

4611. Nasdaq Market Center Participant Registration

(a) Participation in the Nasdaq Market Center as a Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm requires current registration as such with Nasdaq. Such registration shall be conditioned upon the participant’s initial and continuing compliance with the following requirements:

(1) execution of applicable agreements with Nasdaq;

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which Nasdaq Market Center compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of Nasdaq and the Commission, including, with respect to Nasdaq Market Makers in ITS Securities, the ITS Plan in their use of the System;

(4) maintenance of the physical security of the equipment located on the premises of the Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm to prevent the improper

use or access to Nasdaq systems, including unauthorized entry of information into the Nasdaq Market Center; and

(5) acceptance and settlement of each Nasdaq Market Center trade that the Nasdaq Market Center identifies as having been effected by such participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Nasdaq Market Center trade by the clearing member on the regularly scheduled settlement date.

A member's registration shall become effective upon receipt by the member of notice of an approval of registration by Nasdaq. The registration required hereunder will apply solely to the qualification of a Participant to participate in the System. Such registration shall not be conditioned upon registration in any particular Nasdaq Market Center securities.

(b) Each Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm shall be under a continuing obligation to inform Nasdaq of noncompliance with any of the registration requirements set forth above.

(c) Nasdaq may impose upon any Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as Nasdaq may determine to be necessary to protect the integrity of Nasdaq's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm or at Nasdaq, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm in writing.

4612. Registration as a Nasdaq Market Maker

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

(b) A Nasdaq Market Maker may become registered in an issue by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems or by contacting Nasdaq Market Operations. Registration shall become effective on the day the registration request is entered.

(c) A Nasdaq Market Maker's registration in an issue shall be terminated by Nasdaq if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

[(d) In cases where a Nasdaq Market Maker has more than one trading location, a fifth character geographic indicator shall be appended to the Nasdaq Market Maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by Nasdaq and published from time to time in the Nasdaq symbol directory.]

4613. Character of Quotations

A member registered as a Nasdaq Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Nasdaq Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-

sided quotation (“Principal Quote”), which is attributed to the market maker by a special maker participant identifier (“MPID”) and is displayed in the Nasdaq Market Center at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker [in a Nasdaq-listed security] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 604, provided, however, that a registered Nasdaq Market Maker may augment its displayed quotation size to display limit orders priced at the market maker’s quotation. Unless otherwise designated, a “normal unit of trading” shall be 100 shares.

(B) [Minimum Price Variation for Decimal-based Quotations- The minimum quotation increment for Nasdaq securities authorized for decimal pricing shall be \$0.01. Quotations failing to meet this standard shall be rejected.] The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(b) Firm Quotations

(1) All quotations and orders to buy or sell entered into the System by Nasdaq Market Makers, Nasdaq ECNs, and Nasdaq Order Entry firms are firm and automatically executable for their displayed and non-displayed size in the System. [A Nasdaq Market Maker that receives an offer to buy or sell from another member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in the Nasdaq Market Center at the time of receipt of any such offer. If a Nasdaq Market

Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member, execute a transaction at least at the size displayed.]

[(2) If a Nasdaq Market Maker, upon receipt of an offer to buy or sell from another member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated in the Nasdaq Market Center at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such market maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Nasdaq Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (c) of this rule.]

(c) Quotations Reasonably Related to the Market

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

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

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired and the market maker elects to remain in Nasdaq, the Nasdaq Market Maker shall

execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq Market Center.

(d) Reserved

(e) Locked and Crossed Markets

(1) Locked and Cross Markets within the System: Any quotes or orders that are entered into the System that would lock or cross another order in the System will be executed by the System. This processing, set forth in Rule 4757, ensures that no locked or crossed markets can exist within the System and that price improvement is allocated fairly.

(2) Inter-market Locked and Crossed Markets

(A) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(ii) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the

price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(iii) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(B) Prohibition. Except for quotations that fall within the provisions of paragraph (D) of this Rule, Nasdaq members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(C) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(D) Exceptions.

(i) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was

experiencing a failure, material delay, or malfunction of its systems or equipment.

(ii) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(iii) The locking or crossing quotation was an automated quotation, and the Nasdaq member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(iv) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

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

(A) the bid quotation entered is equal to (“lock”) or greater than (“cross”) the asked quotation of another Nasdaq Market Maker entering quotations in the same security; or

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

(2) A Nasdaq Market Maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed

market by executing transactions with all Nasdaq Market Makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule, a Nasdaq Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

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

(A) any Nasdaq member that enters into an ECN, as that term is defined in SEC Rule 600, a priced order that is displayed in the Nasdaq Market Center;

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

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

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

4614. Stabilizing Bids

(a) Nasdaq Market Maker [and ITS/CAES Market Maker] Obligation/Identifier

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

(b) Eligibility

Only one Nasdaq Market Maker [or ITS/CAES Market Maker] in a security may enter a

stabilizing bid.

(c) Limitations on Stabilizing Bids

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

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

(d) Submission of Request to Nasdaq

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

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

(A) the identity of the security and its symbol;

(B) the contemplated effective date of the offering and the date when the offering will be priced;

(C) the date and time that an identifier should be included on Nasdaq; and

(D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless Nasdaq determines otherwise.

4615. Reserved

4616. Reports

A Nasdaq Market Maker, Nasdaq ECN, or Order Entry Firm [or ITS/CAES Market Maker] shall make such reports to Nasdaq as may be prescribed from time to time by Nasdaq.

4617. Normal Business Hours

The System operates from 7:00 a.m. to 8:00 p.m. Eastern Time on each business day, unless modified by Nasdaq. A Nasdaq Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. [Should a] A Nasdaq Market Maker [wish to] may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4:00 p.m. Eastern Time[, it shall so notify Nasdaq Market Operations and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time]. Nasdaq Market Makers whose quotes are open prior to 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all Nasdaq Rules that are not by their express terms, or by an official interpretation of Nasdaq, inapplicable to any part of the 7:00 a.m. to 9:30 a.m. or 4:00 p.m. to [6:30] 8:00 p.m. Eastern Time period.

4618. Clearance and Settlement

(a) All transactions through the facilities of the Nasdaq Market Center shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

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

4619. Withdrawal of Quotations and Passive Market Making

(a) Except as provided in paragraph (b) of this Rule, a market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq MarketWatch only upon satisfying one of the conditions specified in this Rule.

(b) A Nasdaq Market Maker that wishes to obtain excused withdrawal status based on a market maker’s systemic equipment problems, such as defects in a Nasdaq Market Maker’s software or hardware systems or connectivity problems associated with the circuits connecting Nasdaq Market Center systems with the Nasdaq Market Maker’s systems, shall contact Nasdaq Market Operations. Nasdaq Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Nasdaq Market Operations.

(c) (1) For Nasdaq-listed securities, e[E]xcused withdrawal status based on circumstances beyond the Nasdaq Market Maker’s control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days

(unless such request is required to be made pursuant to paragraph (e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by Nasdaq one business day in advance and is approved by Nasdaq. Excused withdrawal status based on vacation may be granted only if:

([1]A) The written request for withdrawal is received by Nasdaq one business day in advance, and is approved by Nasdaq

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

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

(2) For ITS Securities, a Nasdaq Market Maker that wishes to withdraw quotations shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Market Maker's control may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. 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 Nasdaq has initiated a trading halt for Market Makers in the security, pursuant to Rule 4120.

(d) Excused withdrawal status may be granted to a Nasdaq Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the Nasdaq Market Center, thereby terminating its registration as a Nasdaq Market Maker. Provided however, that if Nasdaq finds that the Nasdaq Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and the Rule 4700 Series governing the Nasdaq Market Center. Nasdaq Market Makers that fail to maintain a clearing relationship will have their Nasdaq Market Center system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

(e) Excused withdrawal status or passive market maker status may be granted to a Nasdaq Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution

that does not have a manager shall provide written notice to Nasdaq MarketWatch and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Nasdaq Market Maker's quotations, or that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Nasdaq Market Maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq MarketWatch and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq MarketWatch as required by subparagraph (e)(2), below.

(2) A Nasdaq Market Maker that has been identified to Nasdaq MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq MarketWatch and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid

having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a Nasdaq Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit Nasdaq from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

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

(5) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1) of this Rule shall submit a request to Nasdaq MarketWatch and the Market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(f) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Nasdaq Market Makers seeking review of the denial of an excused withdrawal

pursuant to this Rule 4619, or the conditions imposed on their reentry.

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the Nasdaq Market Center. A Nasdaq Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days in the case of Nasdaq-listed securities or for one (1) business day in the case of ITS securities. Withdrawal from participation as a Nasdaq Market Maker in the Nasdaq Market Center shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Nasdaq Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Nasdaq Market Center and thereby terminates its registration as a Nasdaq Market Maker may register as a market maker at any time after a clearing arrangement has been reestablished unless Nasdaq finds that the Nasdaq Market Maker's failure to maintain a clearing arrangement is voluntary, in which case the withdrawal of quotations will be considered voluntary and unexcused.

(b) Notwithstanding the above, a Nasdaq Market Maker that accidentally withdraws as a Nasdaq Market Maker may be reinstated if:

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

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

(3) the Nasdaq Market Maker's firm would not exceed the following reinstatement limitations:

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

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

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

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

(1) the number of accidental withdrawals by the Nasdaq Market Maker in the past, as compared with Nasdaq Market Makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the Nasdaq Market Maker intended to withdraw from and the symbol of the stock that the Nasdaq Market Maker actually withdrew from;

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

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

(5) the timeliness with which the Nasdaq Market Maker notified MarketWatch of the error.

(d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily withdrawing its two-sided quotation from the Nasdaq Market Center if the Nasdaq Market Maker's two-sided quotation in the subject security is withdrawn by Nasdaq's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the Nasdaq Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;

(2) the Nasdaq Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Nasdaq Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, Nasdaq MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings

brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

4621. Suspension and Termination of Quotations

Nasdaq may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate the authority of a Nasdaq Market Maker, Nasdaq ECN, or Order Entry Firm [or ITS/CAES Market Maker] to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622. Termination of Nasdaq Service

Nasdaq may, upon notice, terminate Nasdaq service in the event that a Nasdaq Market Maker, Nasdaq ECN, or Order Entry Firm [or ITS/CAES Market Maker] fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by Nasdaq.

4623. Alternative Trading Systems

(a) Nasdaq may provide a means to permit alternative trading systems (“ATs”), as such term is defined in Regulation ATS, and electronic communications networks (“ECNs”), as such term is defined in SEC Rule 600,

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

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 602(b)(5)(ii)(A) and (B) (“ECN display alternatives”); or

(3) to provide orders to Nasdaq voluntarily.

In providing any such means, Nasdaq shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by [Nasdaq market makers (and other] subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber’s order in Nasdaq[]], and allows any Nasdaq

member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

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

(1) demonstrate to Nasdaq that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule 600;

(2) be registered as a Nasdaq member;

(3) enter into and comply with the terms of applicable agreements with Nasdaq;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of [Nasdaq market maker orders (and orders from other] subscriber[s] orders of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq[]], at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ATS or ECN;

(5) provide an automatic[ed] execution [or, if the price is no longer available, an automated rejection] of any quote or order [routed to] entered into the System by the ATS or ECN.[through the Nasdaq-provided display alternative.]

[(6) not charge to broker-dealers that access the ATS or ECN through the Nasdaq Market Center any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) or that exceeds \$0.003 per share].

[(c) When a Nasdaq member attempts to electronically access through a Nasdaq-provided

system an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order in Nasdaq on a reserved size basis, the Nasdaq member that operates the ATS or ECN shall execute such Nasdaq-delivered order:]

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

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

[No ATS or ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.]

[Nothing in this Rule shall require the provision to Nasdaq of a locking or crossing bid or offer, if such locking or crossing bid or offer is instead provided to another display alternative operated by a national securities exchange or national securities association.]

4624. Penalty Bids and Syndicate Covering Transactions

(a) A Nasdaq Market Maker [or ITS/CAES Market Maker] acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD

Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A Nasdaq Market Maker [or ITS/CAES Market Maker] that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

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

(1) the identity of the security and its symbol;

(2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

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

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

4625. Obligation to Provide Information

(a) A Nasdaq Market Maker, Nasdaq ECN, or Order Entry Firm [or ITS/CAES Market Maker] operating in or participating in the Nasdaq Market Center or other Nasdaq-operated system shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(1) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, SEC rule, or

provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by Nasdaq; this shall include, but not be limited to, information relating to:

(A) a locked or crossed market; or

(B) Reserved

(C) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Nasdaq Rule 4120 and IM-4120-1; or

(D) a quotation that appears not to be reasonably related to the prevailing market; or

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

(F) a request for an excused withdrawal or reinstatement, pursuant to Nasdaq Rules 4619[,], and 4620 [, and 5222]; or

(G) the resolution of a trade-through complaint, or other transaction, pursuant to Nasdaq Rules 4759 [,5262, 5265,] and 11890; or

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

(2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to- time) that Nasdaq Market Operations is responsible for

administering or to other duties and/or obligations for which Nasdaq Market Operations is responsible; this shall include, but not be limited to, information relating to an equipment failure.

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

4626. Limitation of Liability

(a) Except as provided for in paragraph (b) below, Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center or Nasdaq's Brut [order execution] system for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center, or Brut system, as applicable, has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability

shall not exceed the larger of \$100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.

(2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system on a single trading day, Nasdaq's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center or Brut system during a single calendar month, Nasdaq's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(4) In the event all of the claims arising out of the use of the Nasdaq Market Center or Brut system cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising on a single trading day, or during a single calendar month, as applicable.

(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Nasdaq Market Center or the Brut system gave rise to such claims. Nothing in this rule shall obligate Nasdaq or Brut to seek recovery under any applicable insurance policy.

4627. 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) Nasdaq shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

4628. Compliance with Rules and Registration Requirements

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the Nasdaq Market Center identified herein shall subject such Participant to censure, fine, suspension or revocation of its registration as a Nasdaq Market Maker, Order Entry Firm, and/or Nasdaq ECN or any other fitting penalty under the Nasdaq Rules.

(b) (1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Rule 4611, it shall be removed from the Nasdaq Market Center until such time as a clearing arrangement is reestablished.

(2) A Participant that is not in compliance with its obligations under paragraphs (a)(2) of Rule 4611 shall be notified when Nasdaq exercises its authority under paragraph (b)(1) above.

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

[4700. NASDAQ MARKET CENTER - EXECUTION SERVICES]

Nasdaq is proposing to delete each and every rule in the 4700 Series that was approved in the Order dated January 13, 2006.

4750. NASDAQ MARKET CENTER - EXECUTION SERVICES

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on a national securities exchange other than Nasdaq.

(a) The term “Nasdaq Market Center,” or “System” shall mean the automated system for order execution and trade reporting owned and operated by The NASDAQ Stock Market LLC.

The Nasdaq Market Center comprises:

(1) an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;

(2) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment;

(3) a data feed(s) that can be used to display with attribution to Participants’ MPIDs all Quotes and Displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq Market Center.

(b) The term “System Securities” shall mean all securities listed on Nasdaq and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

(c) The term “Participant” shall mean an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include:

(1) “Nasdaq ECNs,” members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more Nasdaq-listed securities.

(2) “Nasdaq Market Makers,” members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities.

(3) “Order Entry Firms,” members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623.

(d) With respect to System-provided quotation functionality:

(1) The term “Quote” shall mean a single bid or offer quotation submitted to the System and designated for display (price and size) next to the Participant’s MPID by a Participant that is eligible to submit such quotations.

(2) The term “Automatic Quote Refresh “ shall mean the default price increment away from the executed price and the size to which a Participant’s Quote will be refreshed if the Participant elects to utilize this functionality. If the Participant does not designate an Automatic Quote Refresh size, which must be at least one normal unit of trading, the default Automatic Quote Refresh size shall be 100 shares and the default Automatic Quote Refresh price increment shall be \$0.25.

(3) The term “Reserve Size” shall mean the System-provided functionality that permits a Participant to display in its Displayed Quote part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis. Both the displayed and non-displayed portions are available for potential execution against

incoming orders. If the Displayed Quote is reduced to less than a normal unit of trading, 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 time-stamp of its original entry.

(e) The term “Order” shall mean a single order or multiple orders at the same price submitted to the System by a Participant that is eligible to submit such orders and shall include:

(1) “Attributable Orders,” orders that are designated for display (price and size) next to the Participant’s MPID;

(2) “Non-Attributable Orders,” orders that are entered by a Participant that is designated for display (price and size) on an anonymous basis in the order display service of the System; and

(3) “Non-Displayed Orders,” a limit 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.

(f) The term “Order Type” shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) “Discretionary Orders” are orders that have 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, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) 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 triggered by the cancellation of the open shares 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, at its original displayed price, and with its non-displayed discretionary price range.

(2) “Reserve Orders” are limit orders that have both a round-lot displayed size as well as 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 a normal unit of trading, 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 time-stamp of its original entry.

(3) “Limit Orders” are orders to buy or sell a stock at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

(4) “Pegged Orders” are orders that, after entry, has their price automatically adjusted by the System in response to changes in bids or offers in the market, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the

same side of the market (“Primary Peg”) or the opposite side of the market (“Market Peg”). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, Pegged Orders may also establish their pricing relative to the appropriate bids or offers by the selection of one or more 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.

(5) “Minimum Quantity Orders” are orders that require 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 System Hours Immediate or Cancel or Market Hours Immediate or Cancel. Minimum Quantity Orders with a Market Hours Immediate or Cancel time in force received prior to the opening cross or after 4 p.m .will be rejected.

(6) “Intermarket Sweep Order” or “ISO” are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Exchange Act of 1934. ISOs are immediately executable within the System pursuant to Rule 4757 and shall not be eligible for routing as set out in Rule 4758.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in

Rule 600(b) of Regulation NMS under the Act). These additional routed orders must be identified as intermarket sweep orders.

(7) “Price to Comply Order” are orders that, if, at the time of entry, a Price to Comply Order would create a violation of Rule 610(d) of Regulation NMS under the Exchange Act of 1934 by locking or crossing the protected quote of an external market or would cause an Order Protection Rule 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.

(8) “Price to Comply Post Order” are orders that, if, at the time of entry, a Price to Comply Post Order would create a violation of Rule 610(d) of Regulation NMS under the Exchange Act of 1934 by locking or crossing the protected quote of an external market or would cause an Order Protection Rule violation, the order will be re-priced and displayed by the System to one MPV below the current low offer (for bids) or to one penny above the current best bid (for offers). Price to Comply Post Orders will not be routed outside of the System.

(g) The term “Order Size” shall mean the number of shares up to 999,999 associated with a Quote or Order and shall include:

(1) “normal unit of trading”: the round lot size for the security.

(2) “mixed lot”: an order that is for more than a normal unit of trading but not a multiple thereof.

(3) “odd-lot”: an order that is for less than a normal unit of trading.

(h) The term “Time in Force” shall mean the period of time that the System will hold an order for potential execution, and shall include:

(1) “System Hours Immediate or Cancel” or “SIOC” 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. SIOC Orders shall be available for entry and execution from 7:00 a.m. until 8:00 p.m. Eastern Time.

(2) “System Hours Day” or “SDAY” 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 and/or execution from 7:00 a.m. until 8:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party

(3) “System Hours Good-till-Cancelled” or “SGTC” 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 from 7:00 a.m. until 8:00 p.m. Eastern Time unless cancelled by the entering party, or until 1 year after entry, whichever comes first.

(4) “System Hours Expire Time” or “SHEX” 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 and/or execution for the amount of time specified by the entering Participant unless canceled by the entering party. SHEX Orders shall be available for entry and execution from 7:00 a.m. until 8:00 p.m. Eastern Time.

(5) “Market Hours IOC” or “MIOC” shall mean for 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. MIOC Orders shall be available for entry from 7:00 a.m. until 4:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time. MIOC Orders entered between 7:00 a.m. and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

(6) “Market Hours Day” or “MDAY” 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, unless canceled by the entering party, after which it shall be returned to the entering party. MDAY Orders shall be available for entry from 7:00 a.m. until 4:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time.

(7) “Market Hours GTC” or “MGTC” 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 unless cancelled by the entering party, or until 1 year after entry, whichever comes first. MGTC Orders shall be available for entry from 7:00 a.m. until 8:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time.

(8) “Good-til-market close” or “GTMC” 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 cancelled by the entering party, or until the completion of the Nasdaq Closing Cross, after which it shall be returned to the entering party. GTMC orders shall be available for entry and potential execution from 7:00 a.m. and 8:00 p.m. Eastern Time. GTMC orders entered after the Nasdaq Closing Cross will be treated as SIOC orders.

(i) The term “System Book Feed” shall mean a data feed for System eligible securities.

4752. Opening Process For Nasdaq-Listed Securities

(a) Definitions. For the purposes of this rule the term:

(1) “Imbalance” shall mean the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, Open Eligible Interest or OIO order shares at a particular price at any given time.

(2) “Order Imbalance Indicator” shall mean a message disseminated by electronic means containing information about MOO, LOO, OIO, and Early Market Hours orders and the price at which those orders would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) “Current Reference Price” shall mean:

(i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO, Open Eligible Interest and Early Market Hours orders can be paired.

(ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.

(B) the number of shares represented by MOO, LOO, OIO, Early Market Hours orders, and Open Eligible Interest that are paired at the Current Reference Price;

(C) the size of any Imbalance;

(D) the buy/sell direction of any Imbalance; and

(E) indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

(i) "Near Clearing Price" which shall mean the price at which both the MOO, LOO, OIO, and Early Market Hours orders and Open Eligible Interest in the Nasdaq Market Center would execute, and

(ii) “Far Clearing Price” which shall mean the price at which the MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Book would execute.

(iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for “market buy” or “market sell”.

(3) “Limit On Open Order” or “LOO” shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Opening Cross. LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution. LOO orders may be entered, cancelled and cancel/replaced between 7:00 a.m. and 9:28 a.m. without restriction. LOO orders may not be cancelled or corrected after 9:28 a.m.

(4) “Market on Open Order” or “MOO” shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Opening Cross. MOO orders may be entered, cancelled, and cancel/replaced between 7:00 a.m. and 9:28 a.m. and shall execute only at the price determined by the Nasdaq Opening Cross.

(5) “Nasdaq Opening Cross” shall mean the process for determining the price at which orders shall be executed at the open and for executing those orders.

(6) “Opening Imbalance Only Order” or “OIO” shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Opening Cross and only against MOO, LOO or Early Market Hours orders. OIO orders may be entered between 7:00 a.m. and 9:29:59 a.m., but they may not be cancelled or modified after

9:28 except to increase the number of shares. OIO sell (buy) orders shall only execute at or above (below) the 9:30 Nasdaq Market Center offer (bid).

(7) “Market Hours Orders” shall mean any order that may be entered into the system and designated with a time-in-force of MIOC, MDAY, MGTC. Market Hours Orders shall be designated as “Early Market Hours Orders” if entered into the system prior to 9:28 a.m. and shall be treated as market-on-open and limit-on-open orders, as appropriate, for the purposes of the Nasdaq Opening Cross. Orders entered into the system at 9:28 a.m. or after shall be designated as “Late Market Hours Orders” and shall be treated as imbalance-only orders for the purposes of the cross. Beginning at 9:28 a.m., requests to cancel or modify Market Hours Orders shall be suspended until after completion of the Opening Cross at which time such requests shall be processed, to the extent that such orders remain available within the System.

(8) “Open Eligible Interest” shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, SHEX, or GTMC.

(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders in Nasdaq-listed securities at 7:00 a.m.:

(1) At 7:00 a.m., the system shall add in time priority all eligible Orders in accordance with each order’s defined characteristics.

(2) At 9:25 a.m., the system shall open all remaining unopened Quotes in accordance with each firm’s instructions.

(3) Nasdaq Quoting Market Participants may instruct Nasdaq to open their Quotes as follows:

(A) At the price of the firm's quote when the quote was closed by the participant during the previous trading day with a normal unit of trading displayed size;

(B) At a price and size entered by the participant between 7:00 a.m. and 9:24:59 a.m.

(4) All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier.

(c) System securities in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. by integrating Market Hours orders into the book in time priority and executing in accordance with market hours rules.

(d) Processing of Nasdaq Opening Cross. For Nasdaq-listed securities, the Nasdaq Opening Cross shall occur at 9:30, and market hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) Beginning at 9:28 a.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds until market open.

(2) (A) The Nasdaq Opening Cross shall occur at the price that maximizes the number of shares of MOO, LOO, OIO, Early Market Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.

(B) If more than one price exists under subparagraph (A), the Nasdaq Opening Cross shall occur at the price that minimizes any Imbalance.

(C) If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the entered price at which shares will remain unexecuted in the cross.

(D) If more than one price exists under subparagraph (C), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.

(E) If the Nasdaq Opening Cross price established by subparagraphs (A) through (D) is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Opening Cross shall occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (D). Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Opening Cross price is selected and fewer than all shares of MOO, LOO, OIO and Early Market Hours Orders that are available in the Nasdaq Market Center would be executed, all Quotes and Orders shall be executed at the Nasdaq Opening Cross price in the following priority:

(A) MOO and Early Market Hours market peg orders, with time as the secondary priority;

(B) LOO orders, Early Market Hours limit orders, OIO orders, SDAY limit orders, SGTC limit orders, GTMC limit orders, SHEX limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price based on limit price with time as the secondary priority;

(C) LOO orders, OIO Orders, Early Market Hours and displayed interest of quotes, SDAY limit orders, SGTC limit orders, GTMC limit orders, and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority;

(D) Reserve interest of quotes, SDAY limit orders, SGTC limit orders, and GTMC limit orders and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and

(4) All Quotes and Orders executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Opening Cross.

4753 Nasdaq Halt Cross

(a) Definitions.

For the purposes of this rule the term:

(1) “Imbalance” shall mean the number of shares of Eligible Interest that may not be matched with other order shares at a particular price at any given time.

(2) “Order Imbalance Indicator” shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) “Current Reference Price” shall mean:

(i) The single price at which the maximum number of shares of Eligible Interest can be paired.

(ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean:

(a) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

(b) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

(c) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

(B) the number of shares of Eligible Interest that are paired at the Current Reference Price;

(C) the size of any Imbalance;

D) the buy/sell direction of any Imbalance; and

(E) indicative prices at which the Nasdaq Halt Cross would occur if the Nasdaq Halt Cross were to occur at that time. The indicative prices shall be:

(i) The Far Clearing Price which shall be the same as the Current Reference Price, and

(ii) The Near Clearing Price which shall be the same as the Current Reference Price.

(iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for “market buy” or “market sell”.

(3) “Nasdaq Halt Cross” shall mean the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.

(4) “Eligible Interest” shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SIOC, SDAY, SGTC, MIOC, MDAY, MGTC, SHEX, or GTMC.

(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt initiated pursuant to Rule 4120(a)(1), (4), (5), (6) or (7), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and Market hours trading shall commence when the Nasdaq Halt Cross concludes.

(1) At the beginning of the Display Only Period and continuing through the resumption of trading, Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(2) (A) The Nasdaq Halt Cross shall occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed.

(B) If more than one price exists under subparagraph (A), the Nasdaq Halt Cross shall occur at the price that minimizes any Imbalance.

(C) If more than one price exists under subparagraph (B), the Nasdaq Halt Cross shall occur at the entered price at which shares will remain unexecuted in the cross.

(D) If more than one price exists under subparagraph (C), the Nasdaq Halt Cross shall occur at:

(i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;

(ii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and

(iii) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.

(3) If the Nasdaq Halt Cross price is selected and fewer than all shares of Eligible Interest that are available in the Nasdaq Market Center would be executed, all Eligible Interest shall be executed at the Nasdaq Halt Cross price in price/time priority.

(4) All Eligible Interest executed in the Nasdaq Halt Cross shall be executed at the Nasdaq Halt Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Halt Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Halt Cross unless the stock has already been traded during normal market hours on that trading day.

(c) Nasdaq-listed securities that are the subject of a trading halt initiated pursuant to Rule 4120(a) and in which no Halt Cross occurs, shall open for trading at the time specified by Nasdaq pursuant to Rule 4120 in the following manner:

(1) Orders shall be added to the book in time priority.

(2) The Nasdaq Official Opening Price for such securities shall be the first Nasdaq market center execution following trade resumption unless the security has already traded during Market hours on that trading day.

4754. Nasdaq Closing Cross

(a) Definitions. For the purposes of this rule the term:

(1) “Close Eligible Interest” shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC.

(2) “Imbalance” shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, Close Eligible Interest or IO order shares at a particular price at any given time.

(3) “Imbalance Only Order” or “IO” shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 7:00 a.m. and 3:59:59 p.m., but they cannot be modified after 3:50:00 except to increase the number of shares. IO orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). IO orders cannot be cancelled after 3:55:00 p.m. for any reason. IO sell (buy) orders will only execute at or above (below) the 4:00:00 System offer (bid).

(4) “Limit On Close Order” or “LOC” shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected without restriction between 7:00 a.m. and 3:50:00 p.m. LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). LOC orders cannot be cancelled after 3:55:00 p.m. for any reason. LOC Orders will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.

(5) “Market on Close Order or MOC” shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 7:00 a.m. and 3:50:00 p.m. MOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). MOC orders cannot be cancelled after 3:55:00 p.m. for any reason. MOC orders will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(6) “Nasdaq Closing Cross” shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.

(7) “Order Imbalance Indicator” shall mean a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) “Current Reference Price” shall mean:

(i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, IO and Close Eligible Interest can be paired.

(ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.

(iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.

(B) the number of shares represented by MOC, LOC, IO, and Close Eligible Interest that are paired at the Current Reference Price;

(C) the size of any Imbalance;

(D) the buy/sell direction of any Imbalance; and

(E) indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

(i) "Far Clearing Price" which shall mean the price at which both the MOC, LOC, and IO, orders would execute, and

(ii) “Near Clearing Price” which shall mean the price at which the MOC, LOC, IO, and Eligible Interest would execute.

(iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for “market buy” or “market sell”.

(b) Processing of Nasdaq Closing Cross. The Nasdaq Closing Cross will begin at 4:00:00, and post-market hours trading will commence when the Nasdaq Closing Cross concludes.

(1) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds until market close.

(2) (A) The Nasdaq Closing Cross will occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed.

(B) If more than one price exists under subparagraph (A), the Nasdaq Closing Cross shall occur at the price that minimizes any Imbalance.

(C) If more than one price exists under subparagraph (B), the Nasdaq Closing Cross shall occur at the entered price at which shares will remain unexecuted in the cross.

(D) If more than one price exists under subparagraph (C), the Nasdaq Closing Cross shall occur at: a price that minimizes the distance from the System bid-ask midpoint at the time of the Nasdaq Closing Cross.

(E) If the Nasdaq Closing Cross price established by subparagraphs (A) through (D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the

threshold amounts that best satisfies the conditions of subparagraphs (A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC IO and Close Eligible Interest would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price based on price with time as the secondary priority;

(C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price, trade reported anonymously, and disseminated via the consolidated tape. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.

(5) Auxiliary Procedures. When significant trading volume is expected at the close of Market hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures

for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:

(A) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.

(B) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.

(C) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order Imbalance Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.

(D) Adjusting the threshold values set forth in subparagraph (c)(2)(D) to no greater than 20 percent.

4755. Order Entry Parameters

(a) System Orders

(1) General - A 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.

(A) All System Orders shall indicate limit price and whether they are a buy, short sale, short-sale exempt, or long sale. Systems Orders can be

designated as Market Hours Immediate or Cancel (“MIOC”), Market Hours Good-till-Cancelled (“MGTC”), Market Hours Day (“MDAY”), System Hours Expire Time (“SHEX”), System Hours Day (“SDAY”), System Hours Immediate or Cancel (“SIOC”), System Hours Good-till-Cancelled (“SGTC”), or Good-till-Market Close “GTMC”).

(B) A System order may also be designated as Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, an Intermarket Sweep Order, a Price to Comply order, a Price to Comply Post order, or a Discretionary Order.

(C) System Hours Pegged Orders, excluding System Hours Pegged orders ultimately sought to be directed to either the New York Stock Exchange (“NYSE”) or the American Stock Exchange (“AMEX”), may only be entered between 9:30 a.m. and 4:00 p.m. Eastern Time.

(2) Short Sale Compliance- System orders to sell short shall not be executed if the execution of such an order would violate any applicable short sale regulation of the SEC or Nasdaq.

(3) Routing – All 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 Rule 4758 in Compliance with Regulation NMS.

(4) Regulation NMS – Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participants shall be responsible for compliance with Regulation NMS Order Protection Rule and Locked and Crossed market rule with respect to such orders. Orders eligible for execution outside the System shall be processed in

compliance with Regulation NMS, including accessing protected quotations and resolving locked and crossed markets, as instructed.

4756. Entry and Display of Quotes and 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) from 7:00 a.m. until 8:00 p.m. Eastern Time.

(b) Entry of Quotes—Nasdaq Market Makers and Nasdaq ECNs can enter Quotes into the system from 7:00 a.m. to 8:00 p.m. Eastern Time. When open, Quotes will be processed as System Hours GTC Orders (SGTC). Nasdaq Market Makers and Nasdaq ECNs may elect to utilize the Automatic Quote Refresh functionality. Entry of Quotes will be subject to the requirements and conditions set forth in section (a) above.

(c) Display of Quotes and Orders-- The System will display quotes and orders submitted to the System as follows:

(1) System Book Feed—quotes and orders resident in the System available for execution will be displayed via the System Book Feed.

(2) Best Priced Order Display - For each System Security, the aggregate size of all Quotes and Orders at the best price to buy and sell resident in the System will be

transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot in which case the aggregate size will be displayed in the System Book Feed but not be transmitted to a network processor.

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

(A) Reserve Size--Reserve Size shall not be displayed in the System, but shall be accessible as described in Rule 4757.

(B) Discretionary Orders — The discretionary portion of Discretionary Orders shall not be displayed but shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to 4751(f) and Rule 4757.

(C) 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 Rule 4757.

(D) ITS 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 or cross the market, it will be converted by the System into a Non-Displayed Order. If, at the time of entry, a Displayed Order would lock or 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. For securities subject to the SEC's De Minimis Exemption for certain Exchange Traded Funds, if, at the time of entry, a Displayed Order that the entering party has elected not to make eligible for routing would lock or cross the market, it will be converted by the System into a Non-Displayed Order. If, at the time of entry, a Displayed Order would cross the market by more than 3 cents or would cause a trade-through violation, the order will be converted by the System to a Non-Displayed Order and re-priced to 3 cents above the current low offer (for bids) or 3 cents below 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.

(4) Pursuant to Rule 600(b)(4) of Regulation NMS under the Act, Nasdaq has implemented such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations, as defined in Rule 600(b)(3) of Regulation NMS under the Act; and immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. Nasdaq has adopted policies and procedures for notifying members and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, Nasdaq has adopted policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.

4757. Book Processing

(a) System orders shall be executed through the Nasdaq Book Process set forth below:

(1) 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 Quotes and Reserve Orders, in price/time priority among such interest;

(C) The discretionary portion of Discretionary Orders as set forth in Rule 4751(f).

(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 System book at 10.

Incoming order to sell priced at 9 comes into the System

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

4758. Order Routing

(a) Order Routing Process

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

(A) Exchange-Listed Routing Options. The System provides four routing options for orders in exchange-listed securities. Of these four, only DOT is 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. Except as noted below in SPDY, routed pegged orders in securities listed on another exchange, the System will consider the quotations of accessible markets. The four System routing options for NYSE and/or Amex listed orders are:

(i) DOT (“DOT”) – under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm’s instructions before the destination exchange, so long as such price would not violate the Order Protection Rule. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order’s original limit order price as a non-intermarket sweep order (ISO). This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close.

(ii) Reactive Electronic Only (“STGY”) – under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm’s instructions, in compliance with the Order Protection Rule. When checking the book, the System will seek to execute at the price it would send the order to a

destination market center. If shares remain un-executed after routing, they are posted on the book and are not sent to the NYSE or AMEX. Once on the 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 in order to resolve the locked or crossed market. 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. This process is one of the routing strategies allowed by the System for all securities.

(iii) Electronic Only Scan (“SCAN”) – under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm’s instructions, in compliance with Rule 6111 under Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. If shares remain un-executed after routing, they are posted on the book and are not sent to the NYSE or AMEX. Once on the book, should the order subsequently be locked or crossed by another 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. This process is one of the routing strategies allowed by the System for all securities.

(iv) Aggressive Electronic Only (“SPDY”) - under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm’s instructions, in compliance with Rule 611 of Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. If shares remain unexecuted after routing, they are posted on the book and are not sent to the NYSE or AMEX. Once on the 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 in order to resolve the locked or crossed market. 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 during a locked or crossed market. 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. This process is one of the routing strategies allowed by the System for all securities.

(B) Nasdaq-Listed Routing Options. The STGY, SPDY, and SCAN options are the only routing options provided by the System for orders in Nasdaq-

listed securities not sought to be directed to either the NYSE or AMEX. For routed pegged orders in Nasdaq-listed securities, the System will consider accessible, automated quotes.

(C) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the 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.

4759. ITS Commitments

Until such time as Nasdaq withdraws from the ITS Plan, Quotes and Orders that are eligible for ITS will be processed by the System and routed to the appropriate Non-Nasdaq Participant Market as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable Nasdaq rules. Nasdaq shall participate in the ITS Plan as set forth below.

(a) Incorporation of ITS Rules.

(1) Pre Opening Application. Nasdaq may use the System to participate in the Pre Opening Application in accordance with Section 7 and Exhibit A of the ITS Plan as though they were set forth in their entirety herein .

(2) The System will comply with the Order Protection obligations set forth in Section 8(d) and Exhibits B and C of the ITS Plan as though they were set forth herein in their entirety.

(b) Inbound ITS Commitments

(1) If the ITS Commitment contains an obvious error, the Nasdaq Market Center will decline it. For purposes of this Rule, a transaction may have an obvious error in any term, such as price, number of shares or other unit of trading, identification of the security, or if a specific commitment to trade has been executed with the wrong Nasdaq Market Maker.

(2) If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a-1, the Nasdaq Market Center will decline it.

(3) If the conditions described in subparagraphs (1) and (2) above do not apply, the System will execute an inbound ITS Commitment in accordance with applicable provisions of the ITS Plan.

(c) Outbound Commitments: Any “commitment to trade,” which is transmitted by an Nasdaq Participant to another Non-Nasdaq ITS Participant Market through ITS, shall be firm and irrevocable for the period of thirty seconds following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) direct the commitment to a particular Non-Nasdaq Participant Market;

(2) specify the security which is the subject of the commitment;

(3) designate the commitment as either a commitment to buy or a commitment to sell;

(4) specify the amount of the security to be bought or sold, which amount shall be

for one unit of trading or any multiple thereof;

(5) specify:

(A) a price equal to the offer or bid price then being furnished by the destination Non-Nasdaq 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;

(B) a price at the execution price in the case of a commitment to trade sent in compliance with the block trade rule; or

(C) that the commitment is a commitment to trade “at the market;”

(6) designate the commitment “short” or “short exempt” whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a-1(a) under the Act would apply.

(d) Transactions in ITS securities executed in the System are reported to the CTA Plan Processor by the System at the price specified in the commitment or if executed at a better price, the execution price.

IM 4759-1 Contemporaneous Sending Of ITS Commitments

With respect to trading of ITS Securities only, the terms “trade-through” and “third participating market center trade-through” do not include the situation where a member who initiates the purchase (sale) of an ITS Security, at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS Participant Market, sends contemporaneously through ITS to such ITS Participant Market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market

center's better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

4760. Anonymity

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

(b) Nasdaq shall reveal a Participant's identity in the following circumstances:

(1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency 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) if both Participants to the transaction consent;

(4) Unless otherwise instructed by a member, Nasdaq will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote or Order has been decremented by another Quote or Order submitted by that same member.

4761. Adjustment of Open Quotes and/or Orders

The Nasdaq Market Center will automatically purge all open quotes and/or orders in all Nasdaq Market Center eligible securities 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).

4762. Clearly Erroneous Transactions

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

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[4900. BRUT SYSTEMS]

Nasdaq is proposing to delete each and every rule in the 4900 Series that was approved in the Order dated January 13, 2006.

[4950. INET SYSTEM]

Nasdaq is proposing to delete each and every rule in the 4950 Series that was approved in the Order dated January 13, 2006.

* * * * *

[5200. INTERMARKET TRADING SYSTEM/COMPUTER ASSISTED EXECUTION SYSTEM]

Nasdaq is proposing to delete each and every rule in the 5200 Series that was approved in the Order dated January 13, 2006.

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

1. Purpose

Nasdaq currently operates three execution systems: (1) the Nasdaq Market Center, formerly known as Supermontage ("NMC Facility"); (2) the Brut ECN, a registered broker-dealer which is a Nasdaq subsidiary ("Brut Facility"); and (3) the INET ECN which is also operated by Brut, LLC, a subsidiary of Nasdaq ("INET Facility") (collectively, the "Nasdaq

Facilities”).⁶ The Nasdaq Facilities are all linked, but each operates pursuant to independent Commission-approved rules, the NMC Facility under the 4700 Series, the Brut Facility under the 4900 Series, and the INET Facility under the 4950 Series.

Through this filing, Nasdaq is proposing to integrate the three matching systems operating in the Nasdaq Facilities into a single matching system (the “Integrated System” or “System”), governed by a single set of rules, and subject to a single fee schedule. Nasdaq states that, to ease the transition for Nasdaq participants, the Integrated System will utilize the same connectivity by which users access each of the Nasdaq Facilities, and leverage functionality that is already approved and operational within one or more of the Nasdaq Facilities. For example, the Integrated System will use slightly modified functionality from the INET Facility for order entry, display, processing, and routing and draw on functionality in the NMC Facility for the opening and closing processes. Participants will remain subject to general obligations applicable to all Nasdaq Facilities, including honoring System trades, complying with all Commission and Nasdaq rules, and properly clearing and settling trades.

As described in more detail below, Nasdaq is also proposing limited modifications that are: (1) designed to ensure Nasdaq’s compliance with Regulation NMS; (2) utilized when Nasdaq operates as an exchange; and (3) improvements to how the System serves investors, for example, by requiring participation in the System on an automated basis.

⁶ Nasdaq states that, until January 31, 2006, INET ATS, Inc. was a registered broker-dealer and a member of the NASD. On February 1, 2006, the INET broker-dealer was merged into the Brut broker-dealer which is a member of the New York Stock Exchange. Nasdaq states that it will continue to operate the Brut Facility and INET Facility under the rubric of a single broker-dealer until the Integrated System is fully operational.

1. Reorganization and Simplification of Rules.

Nasdaq states that merging the three Nasdaq Facilities into a single platform provides Nasdaq with an opportunity to simplify its rule manual and make it more transparent to investors. Nasdaq will merge five sets of rules (the 4600, 4700, 4900, 4950, and 5200 Series) into two (the 4600 and 4750 Series). First, Nasdaq is proposing to eliminate two complete sets of rules, those governing the Brut Facility (4900 Series) and those governing the INET Facility (4950 Series). Because the Integrated System draws from both the current NMC Facility rules as well as the INET Facility rules, Nasdaq determined to create an entirely new set of rules for the Integrated System, the 4750 Series, rather than attempt to modify the current NMC Facility rules.

Second, since the Integrated System provides a single platform for the trading of stocks listed on the Nasdaq exchange as well as other exchanges, Nasdaq is merging the rules governing members that trade both sets of securities. Specifically, Nasdaq is proposing to eliminate the Nasdaq Rule 5200 Series governing securities eligible to trade via the Intermarket Trading System (“ITS Securities”). Nasdaq will retain the obligations set forth in the Nasdaq Rule 5200 Series, many of which overlap completely with rules in the Nasdaq Rule 4600 Series that currently apply only to market makers in Nasdaq-listed securities. Nasdaq will insert into similar rules already contained in the Nasdaq Rule 4600 Series governing Nasdaq-listed securities. As a result, the proposed Nasdaq Rule 4600 Series will set forth the obligations of all Nasdaq participants – market makers, order entry firms, and ECNs – in all securities traded on Nasdaq.

Nasdaq states that, because market makers in ITS Securities are already subject to strict regulations applicable to those for Nasdaq securities, Nasdaq is able to merge these rule sets with

the assistance of only a single new rule. Proposed Nasdaq Rule 4602 sets forth definitions formerly contained in Nasdaq Rule 5210 that are specific to the trading of ITS Securities. All other market maker obligations from the Nasdaq Rule 5200 Series will reside in the Nasdaq Rule 4600 Series with minor changes or none at all. Specifically, Nasdaq is proposing to merge former Nasdaq Rule 5220 regarding ITS/CAES Registration into proposed Nasdaq Rule 4611; former Nasdaq Rule 5221 (Obligations of ITS/CAES Market Makers) into proposed Nasdaq Rules 4612 and 4613; former Nasdaq Rule 5222 (Withdrawal of Quotations) into proposed Nasdaq Rule 4619; former Nasdaq Rule 5223 (Voluntary Termination of Registration) into proposed Nasdaq Rule 4620; former Nasdaq Rule 5224 (Suspension and Termination of Quotations) into proposed Nasdaq Rule 4621; former Nasdaq Rule 5265 (Authority to Cancel or Adjust Transactions) into proposed Nasdaq Rule 4762); and former Nasdaq Rule 5266 (Market Participant Identifiers) into proposed Nasdaq Rule 4613. As a result, Nasdaq market makers will have virtually uniform obligations across all securities under those rules. As described in more detail in Section 2 below, the remainder of the Nasdaq Rule 5200 Series obligations will be retained in proposed Nasdaq Rule 4959 governing ITS Commitments.

Finally, Nasdaq is proposing to create a set of rules that purely governs the operation of the Integrated System, separate from the rules governing System participants. Therefore, the proposed Nasdaq Rule 4750 Series contains only those rules relating to the execution of trades by the Integrated System, and rules unrelated to actual executions have been moved to the Nasdaq Rule 4600 Series. For example, current Nasdaq Rules 4712 and 4713 (NMC Facility), 4907 and 4908 (Brut Facility), and 4958 and 4959 (INET Facility) governing participants' obligations to honor trades and to comply with applicable rules and registration requirements

have been all renumbered as Nasdaq Rules 4627⁷ and 4628. Several rules formerly contained in the Nasdaq Rule 4700 Series governing the NMC Facility duplicate in whole or in part rules that also exist in the Nasdaq Rule 4600 Series. For example, current Nasdaq Rules 4617, 4705, 4912, and 4963 all describe Nasdaq's hours of operation and Nasdaq Rules 4618, 4711, 4906, and 4957 all govern Clearance and Settlement. Those rules will be maintained in the Nasdaq Rule 4600 Series as Nasdaq Rules 4617 and 4618.

As set forth in more detail in Section 2 below, the remaining rules contained in the Nasdaq Rule 5200 Series will be incorporated into proposed Nasdaq Rule 4759 governing ITS Commitments.

2. Exchange Registration Readiness

Nasdaq will program the Integrated System to operate in compliance with Nasdaq's recent registration as a national securities exchange to reflect the Nasdaq rules approved via the January 13, 2006 Order. For example, the Integrated System will not accept reports of transactions occurring outside the Integrated System as it does today. The Integrated System will interact with the network processors for the various national market system plans in compliance with Commission rules governing exchanges, most notably the Quote Rule provisions governing transmission of quotation information in Rule 602(a)(1)(i) under Regulation NMS. Nasdaq states that the Integrated System will also fulfill Nasdaq's new role as an exchange in the national market system plans themselves.

⁷ Nasdaq states that proposed Nasdaq Rule 4627 will also apply to trading in ITS Securities and will replace current Nasdaq Rule 5261.

In fact, the vast majority of exchange-related modifications are necessitated by changes to the national market system plan governing the Intermarket Trading System (“ITS Plan”).⁸ Nasdaq states that it ensures that its members comply with the ITS Plan by programming many Plan restrictions into its execution system. As an association market, Nasdaq participates in ITS trading through its individual ITS market makers. The ITS Plan has detailed rules governing the obligations of individual ITS market makers, including the obligation of each to maintain a two-sided quote, to comply with the ITS trade through rule and locked and crossed markets rule, and to maintain particular ITS operations on their premises. A significant aspect of Nasdaq’s current participation in the ITS linkage is the inability for Nasdaq order entry firms to post liquidity in the Nasdaq Market Center.

As an exchange market, Nasdaq states that it will participate as a single, unified trading entity on its own behalf for the benefit of its members. As such, Nasdaq itself will be bound by the obligations of the ITS Plan, and its members will be relieved of obligations that have not applied to members of other exchanges or even to NASD members that participate in other exchanges’ execution facilities. Nasdaq will maintain a single two-sided quotation, rather than its members being obligated individually to maintain two-sided quotes. Additionally, Nasdaq states that it, rather than its members, will be responsible for trade-through compliance, opening the system to full participation by order entry firms.

⁸ Nasdaq states that on December 27, 2005, the Operating Committee of the ITS Plan unanimously approved the 22nd Amendment to the Plan which admits Nasdaq to the ITS Plan as a new Exchange Participant. The 22nd Amendment will be formally filed with the Commission when each of the ITS Participants has executed the required documents. The 22nd Amendment and the formation documents for the successor to the ITS Plan, the so-called “NMS Linkage Plan,” are being circulated simultaneously.

Nasdaq states that it will continue to rely on system programming to comply with its obligations under the ITS Plan. Nasdaq has re-numbered current NASD Rule 4708 as Nasdaq Rule 4759, in order to retain - on an exchange basis - the compliance obligations contained in the current rule. Specifically, proposed Nasdaq Rule 4759(a) states that the System will comply with obligations imposed by ITS Plan provisions governing Trade Throughs,⁹ Block Trade Throughs, and Locked and Crossed Markets (Section 8).¹⁰ Nasdaq states that it will retain all existing Plan obligations, but is proposing to incorporate by reference the ITS Plan language by reference rather than needlessly repeating the lengthy Plan language in its rule manual, thereby eliminating the need for current Nasdaq Rules 5240, 5250, 5262, 5263, and 5264.

Nasdaq states that proposed Nasdaq Rule 4759(b) is identical to current NASD Rule 4708(b) with one exception. Nasdaq is proposing to expand section (b)(1) to include the ITS “clearly erroneous policy” currently stated in NASD Rule 5265. Nasdaq states that this modification is designed to maintain the status quo with respect to Nasdaq’s implementation of the obvious error policy for ITS Securities.

Nasdaq is also proposing to add Nasdaq Rule 4759(c), which will incorporate subsections (b) and (d) of NASD Rule 5230, entitled “ITS Operations,” with minor updates to

⁹ Nasdaq is proposing to retain at Nasdaq Rule 4756(b)(3)(F) the INET Facility processing for ITS Trade Through and Locked and Crossed markets compliance which currently is described at NASD Rule 4954(b)(3)(F). Nasdaq proposes adding a description of the System processing for securities subject to the Commission’s so-called “de minimis” exception to the ITS trade through rule.

¹⁰ Though Nasdaq may do so under proposed Nasdaq Rule 4759(a)(1), Nasdaq states that it is not planning to initiate a Pre-Opening Application or to participate in the Pre-Opening Applications of other markets. The Pre-Opening Application is a mechanism designed for use by the primary listing markets for ITS Securities to open their markets at prices that are materially different than the previous day’s closing prices. Today, the Pre-Opening Application is initiated by the NYSE and Amex for their securities.

reflect current ITS functionality and Nasdaq's role as an exchange rather than an association. Nasdaq is proposing to eliminate subsection (a) of NASD Rule 5230 as redundant with proposed Nasdaq Rule 4618 governing clearance and settlement. Nasdaq is proposing to eliminate subsection (c) of NASD Rule 5230 and to rely instead on Nasdaq Rules 4619 and 4620 to govern market maker quotation practices in ITS Securities. Finally, Nasdaq is proposing to renumber without modification the text of NASD IM-5262-1 except to limit the proposed rule to ITS securities, governing the contemporaneous sending of commitments, as Nasdaq IM-4759-1.

3. Regulation NMS Readiness

Nasdaq is proposing to design the Integrated System to comply with Regulation NMS, and to launch it to precede or coincide with the implementation of the Fair Access and Order Protection Rules, Rules 610 and 611 of Regulation NMS.¹¹ First, Nasdaq has proposed, as Nasdaq Rule 4613(e), the language recently proposed by the staff of the Division of Market Regulation ("Division") as a uniform rule on locked and crossed markets for each self regulatory organization subject to Regulation NMS. Nasdaq states that it will amend this filing to incorporate any modifications that the Division proposes prior to approval of this filing.

Second, Nasdaq is proposing to design the Book Processing (Nasdaq Rule 4757) and Order Routing (Nasdaq Rule 4758) functionality of the Integrated System to comply with Regulation NMS. With respect to Book Processing, Nasdaq will permit firms to designate orders entered into the Integrated System as Intermarket Sweep Orders within the definition of Rule 600(b) of Regulation NMS, and to require the entering party to assume responsibility for

¹¹ Nasdaq has already adopted a rule to implement its obligations under the sub-penny rule, Rule 612 of Regulation NMS under the Act. Nasdaq proposes to renumber that provision at Nasdaq Rule 4613(a)(1)(B).

compliance with respect to the presence of protected quotations in market centers outside of Nasdaq. Nasdaq states that orders designated as such will be automatically matched and rapidly executed without reference to protected quotations in other trading centers. Nasdaq believes that this approach will increase the efficiency of the Nasdaq system and also preserve the maximum flexibility for Nasdaq participants to use alternative order routing systems.

As described in more detail in Section 8 below, for orders entered into the Integrated System without the Intermarket Sweep designation, Nasdaq will offer routing strategies that comply with Rules 610 and 611 of Regulation NMS. Nasdaq states that its Integrated System will automatically identify circumstances requiring routing and utilize the routing strategy selected by the entering party in compliance with Rules 610 and 611 of Regulation NMS, whether the circumstances pertain to the existence of a protected quote, the existence of a locked or crossed market, or the need to resolve an existing locked or crossed market.

Third, Nasdaq is proposing not to offer order delivery processing in the Integrated System to avoid harming investors that participate in Nasdaq on an automatic execution basis. Nasdaq has determined that offering order delivery functionality risks harming automatic execution participants in Nasdaq's system by threatening to render Nasdaq a non-automated or "slow" market center and render quotes there un-protected, at any time a single order delivery participant's quote is "slow." Furthermore, Nasdaq states that a single order delivery participant experiencing technical or operations difficulties could prompt other market centers to invoke the "self-help" exception under Rule 611(b)(1) of Regulation NMS against the Nasdaq Market Center. Nasdaq's experience with order delivery participants has established that, at certain times, especially leading up to the close of market hours, order delivery participants are unable to respond to delivered orders to meet the definition of an automated response under Rule 600(b)

of Regulation NMS. Finally, Nasdaq does not believe it can offer order delivery functionality and also continuously provide “a response to incoming orders that does not significantly vary between orders handled entirely within the SRO trading facility and orders delivered to the ECN.”¹² Nasdaq states that it would be at a substantial competitive disadvantage were it to risk moving into a slow quote status or to risk having other market centers declare self-help against the Nasdaq Market Center in order to integrate order delivery participants.¹³

Nasdaq states that it will offer current order delivery participants extensive testing opportunities to test their systems using Nasdaq’s automatic execution functionality. Nasdaq assumes that firms that remain order delivery participants today have chosen to do so for financial or other competitive reasons beyond Nasdaq’s control or responsibility.

Finally, Nasdaq has added Nasdaq Rule 4756(c)(4), which states that Nasdaq has adopted policies and procedures to identify its quotes as manual or automated and to notify its members of the status of its quotations.

4. Openings and Closing

Nasdaq is proposing to leverage its highly successful opening and closing processes, including the Opening and Closing Crosses and the recently proposed IPO/Halt Cross. The Cross functionality is currently described in NASD Rules 4704 and 4709, and will be re-

¹² See Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS under the Act, dated January 27, 2006, at Question 5 (www.sec.gov/divisions/marketreg/rule611faq.pdf).

¹³ Nasdaq states that it is unable to detect in Regulation NMS or in the Exchange Act a requirement that national securities exchanges offer the opportunity for order delivery participation in their execution systems. If such a requirement were to exist, Nasdaq states that it would consider adopting a rule similar to that of other exchanges that offer order delivery participation in compliance with Regulation NMS.

numbered as Nasdaq Rules 4752 (Opening), 4753 (IPO/Halt)¹⁴ and 4754 (Closing), and modified to optimize its efficiency on the new Nasdaq Market Center platform. Set forth below is a detailed description of the proposed changes from current functionality.

Nasdaq states that the Nasdaq Opening Process, set forth in proposed Nasdaq Rule 4753, is modeled closely on functionality approved for use in the Nasdaq Market Center under current Nasdaq Rule 4704. Several definitions have been changed in non-substantive ways to make the language of the rules governing the Opening and Closing Crosses more consistent and readable. Specifically, existing Nasdaq Rule 4704(a)(2) and (7) have been combined to describe in one place the purpose and function of the Order Imbalance Indicator, and the phrase “Inside Match Price” replaced by “Current Reference Price” with a clarifying tiebreaker added at Nasdaq Rule 4752(a)(2)(A)(iii) and a minor modification to the wording of the third tiebreaker set forth in subsection (a)(2)(A)(iv).

Nasdaq is proposing to modify slightly the entry parameters for Opening Cross orders. Specifically, entry of Limit on Open (“LOO”) Orders will begin at 7:00 a.m. rather than 7:30 a.m. and cease at 9:28 a.m. rather than 9:30 a.m. (Nasdaq Rule 4752(a)(3)). Market on Open (“MOO”) Orders (subsection (a)(4)) and Opening Imbalance Only (“OIO”) orders (subsection (a)(6)) will also be permitted entry at 7:00 a.m. rather than 7:30 a.m. “Regular Hours Orders” have been recast in proposed Nasdaq Rule 4752(a)(7) as “Market Hours Orders” and modified such that, for purposes of the Opening Cross, Early Market Hours Orders will be

¹⁴ Nasdaq states that proposed Nasdaq Rule 4753, governing the Nasdaq Halt Cross, incorporates a proposal set forth in SR-NASD-2006-015, which has not yet been approved.

treated as MOO or LOO orders as appropriate and Late Market Hours Orders will be treated like OIO Orders.

Under proposed Nasdaq Rule 4752(b), the System will open for trading prior to normal market hours at 7:00 a.m. rather than 7:30 a.m. Participants will have the option to open their quotes at a price and size determined by the participant between 7:00 a.m. and 9:24:59 a.m. At 9:25 a.m., the System will open all remaining quotes according to each firm's instructions as to price and size. Securities in which no Opening Cross occurs will, pursuant to proposed Nasdaq Rule 4752(c), begin trading at 9:30 a.m. according to market hours processing rules described in further detail below.

The Opening Cross itself will occur as it does currently with two minor exceptions. First, Nasdaq is proposing to add a tiebreaker to Nasdaq Rule 4752(d)(2)(C) to clarify that shares will be executed in price priority. Second, Nasdaq is substituting current Regular Hours order types with proposed Market Hours order types with slightly different characteristics. Nasdaq states that the mechanism for setting the Opening Cross price, determining priority, executing the cross, and reporting to the consolidated tape will remain unchanged from today.

Nasdaq states that the proposed Nasdaq Halt Cross is virtually identical to that proposed for use by the Nasdaq Market Center. The phrase "Current Reference Price" has replaced "Inside Match Price" and Nasdaq has added new language to both the Current Reference Price (Nasdaq Rule 4753(a)(2)(C)) and the Cross (Nasdaq Rule 4753(b)(2)(C)) to clarify the tiebreakers used in determining reference and execution prices. The term "Eligible Interest" has been modified to reflect the new order types that Nasdaq is proposing herein (Nasdaq Rule 4753(a)(4)), and Nasdaq is proposing to clarify that trades executed as part of the Halt Cross will be reported anonymously to the network processor (Nasdaq Rule 4753(b)(4)).

The Nasdaq Closing Cross, set forth at proposed Nasdaq Rule 4754, will be modified as were the Opening and Halt Crosses. The definitions have been modified to reflect the order types proposed for the Integrated System, to substitute “Current Reference Price” for “Inside Match Price,” and to add the same additional tiebreaker to the calculation of the Current Reference Price and the Closing Cross itself. Nasdaq states that, as with the Opening and Halt Crosses, the substance of the Nasdaq Closing Cross will remain as it is currently on the Nasdaq Market Center.

5. Order Display/Matching System

Nasdaq states that the System will be based upon functionality currently approved for use in Nasdaq’s INET Facility. Specifically, the System will allow participants to enter priced limit orders to buy and sell Nasdaq and exchange-listed securities as attributed, non-attributed, or non-displayed orders. Attributable Orders are designated for display (price and size) next to the Participant’s MPID. Non-Attributable Orders are entered by a Participant and designated for display (price and size) on an anonymous basis in the order display service of the System. Non-Displayed Orders are not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

Orders may be in round-lots, mixed-lots, or odd-lots of any size up to 999,999 shares. Participants will be permitted to enter multiple orders at single or multiple price levels and will have the option to have a portion of their order held in reserve and not displayed to the marketplace. Nasdaq will, in turn, make available to System participants and market data vendors a data feed of all displayable orders on both the bid and offer side of the market (excluding reserve size share amounts) for all price levels at which shares are available within its System. Nasdaq states that the System will comply with Rule 612 of Regulation NMS by

accepting sub-penny prices in \$0.0001 increments for securities priced under \$1.00 a share and by rejecting orders in sub-penny increments for securities priced over \$1.00 per share. Sub-penny prices are viewable via the System Data Feed.

Nasdaq will also offer the opportunity for Nasdaq participants to enter quotations from 7:00 a.m. until 8:00 p.m. Eastern Time. When open, quotes will be processed as System Hours GTC Orders, as set forth in Nasdaq Rule 4751(h)(3) under the same terms and conditions as order entry under Nasdaq Rule 4757(a). Nasdaq Market Makers and Nasdaq ECNs may elect to utilize the Automatic Quote Refresh functionality, which will refresh a participant's quote to 100 shares unless another size is selected.

6. Order Types

Nasdaq states that the proposed System will make available to Participants Limit Orders, Discretionary Orders, and Reserve Orders with the same characteristics and functionality that is currently approved for use in the INET Facility. "Limit Orders" are orders to buy or sell a stock at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

"Discretionary Orders" are orders that have 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, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) 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

triggered by the cancellation of the open shares 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.

“Reserve Orders” are limit orders that have both a round-lot displayed size as well as 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 a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. Nasdaq states that 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 time-stamp of its original entry.

The proposed System will make available the Pegged Order and the Minimum Quantity Order types that are currently approved for use in the INET Facility with minor modifications as described below. “Pegged Orders” are orders that, after entry, have their price automatically adjusted by the System in response to changes in bids or offers in the market, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market (“Primary Peg”) or the opposite side of the market (“Market Peg”). A Pegged Order may be a market order (the only market order available in the System) or it may have a limit price beyond which the order shall not be executed. Nasdaq states that a Pegged Order - whether Primary, Market, limit-priced, or market-priced - will comply with Rule 610 of Regulation NMS, the locked and crossed market rule. In addition, Pegged Orders may also establish their pricing

relative to the appropriate bids or offers by the selection of one or more 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.

Nasdaq is proposing to clarify that Pegged Orders will be priced relative to the bids and offers of the markets to which they may be routed in accordance with the routing instructions selected by the entering firm. For example, if the routing instruction calls for the System to route the order to either the New York Stock Exchange (“NYSE”), Archipelago, or the National Stock Exchange, the bids and offers considered will be those of the potential recipient markets and will not include, for example, the bids and offers of the American Stock Exchange (“Amex”). Nasdaq states that, after Regulation NMS is implemented, an order that is pegged to the NBBO will be pegged to the best-priced protected quotations as defined in Rule 600 of Regulation NMS and will not consider non-protected quotations. As described in more detail in the Routing section below, the System will provide a variety of routing alternatives that comply with Regulation NMS without further action by the entering firm, as well as options that require entering firms to take additional steps to comply with their own regulatory obligations.

“Minimum Quantity Orders” are orders that require 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 (“IOC”). This order type is being modified to reflect that IOC orders may have a time in force of either System Hours Immediate or Cancel or Market Hours Immediate or Cancel. Minimum Quantity Orders with a Market Hours Immediate or Cancel time in force received prior to the opening cross will be rejected.

Finally, Nasdaq is proposing three new order types for the integrated system: Intermarket Sweep Orders, Price to Comply Orders, and Price to Comply Post Orders. “Intermarket Sweep

Orders” are limit orders entered into the System and designated by Participants to be executed within the System at multiple price levels without respect to protected quotations on other market centers. Intermarket Sweep Orders are immediately executable within the System under Nasdaq Rule 4757 and are not be eligible for routing as set out in Nasdaq Rule 4758. By designating an order as an Intermarket Sweep Order, entering firms are agreeing that they will take any additional steps that they deem necessary to comply with their own regulatory obligations. Specifically, simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Rule 600(b) of Regulation NMS). These additional routed orders must be identified as intermarket sweep orders.

“Price to Comply Order” are orders that, if, at the time of entry, a Price to Comply Order would create a violation of Rule 610(d) of Regulation NMS by locking or crossing the protected quote of an external market or would cause an Order Protection Rule 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.

Lastly, Nasdaq is proposing to offer a “Price to Comply Post Order,” which is an order that, if, at the time of entry, a Price to Comply Post Order would create a violation of Rule 610(d) of Regulation NMS by locking or crossing the protected quote of an external market or would cause an Order Protection Rule violation, the order will be re-priced and displayed by the System to one quotation increment below the current low offer (for bids) or to one penny

above the current best bid (for offers). Price to Comply Post orders will not be routed outside of the System.

7. Time in Force Designations

Nasdaq is proposing to expand the number of time in force designations currently available for use in the INET Facility. Participants entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party.

The time in force designations are broken down into two categories: system hours and market hours. “System Hours” designated orders may be entered beginning at 7:00 a.m. EST and are available for execution at all times while the System operates, 7:00 a.m. through 8:00 p.m. EST. “Market Hours” designated orders may be entered beginning at 7:00 a.m. but are available for execution only during normal market hours, 9:30 a.m. through 4:00 p.m. EST. These “time in force” designations are described in more detail below.

“System Hours Immediate or Cancel” or “SIOC”: limit orders, with this designation may be entered and executed between 7:00 a.m. and 8:00 p.m. EST but if after entry into the System any portion of the order is not marketable, that portion order is canceled and returned to the entering Participant.

“System Hours Day” or “SDAY”: orders with this designation may be entered, displayed and/or executed between 7:00 a.m. and 8:00 p.m. EST but if after entry into the System, the order is not fully executed, the unexecuted portion remains available for potential display and/or execution until 8:00 p.m. EST on the day it was submitted unless cancelled before then by the entering party.

“System Hours Good-till-Cancelled” or “SGTC”: if after entry into the System, orders designated as SGTC that are not fully executed remain available for potential display and/or execution between 7:00 a.m. and 8:00 p.m. Eastern Time until cancelled by the entering party, or until 1 year after entry, whichever comes first.

When using the “System Hours Expire Time” or “SHEX” order, users will be permitted to designate the amount of time the order will remain available for execution within the System. If, after entry, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified unless canceled by the entering party. SHEX Orders will be available for entry and execution from 7:00 a.m. Eastern Time until 8:00 p.m. Eastern Time.

“Market Hours IOC” or “MIOC”: if after entry a marketable limit order designated as MIOC becomes non-marketable, the order (or unexecuted portion) will be canceled and returned to the entering participant. MIOC Orders may be entered between 7:00 a.m. and 4:00 p.m. EST and executed between 9:30 a.m. and 4:00 p.m. EST. MIOC Orders entered between 7:00 a.m. and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

“Market Hours Day” or “MDAY”: if after entry an order designated as MDAY is not fully executed, the order (or unexecuted portion) remains available for display and/or execution until 4:00 p.m. Eastern Time, after which it will be returned to the entering party. MDAY Orders are available for entry between 7:00 a.m. and 4:00 p.m. EST and for execution between 9:30 a.m. and 4:00 p.m. EST.

“Market Hours GTC” or “MGTC”: if after entry an order designated as MGTC is not fully executed, the order (or unexecuted portion) remains available for display and/or execution

until cancelled by the entering party, or until 1 year after entry, whichever comes first. MGTC Orders may be entered between 7:00 a.m. and 8:00 p.m. EST and executed between 9:30 a.m. and 4:00 p.m. EST.

“Good-til-market close” or “GTMC”: if entered into the System between 7:00 a.m. and 4:00 p.m., an order designated as GTMC that is not fully executed, the order remains available for display and/or execution until cancelled by the entering party, or until the completion of the Nasdaq Closing Cross, after which it is returned to the entering party if unexecuted. GTMC orders entered after the Nasdaq Closing Cross will be treated as SIOC orders.

8. Anonymity

Nasdaq states that the System’s anonymity standards are substantially similar to those in place in the INET Facility except that the System will clear trades through a registered clearing agency rather than through INET.

9. Routing

Nasdaq states that the System will provide the same capability that the INET Facility currently offers to route orders to other available market centers, with the exception that Nasdaq is proposing to consolidate the current DOT routing options for ITS Securities. DOT orders will be routed to available destinations based on the entering firm’s instructions. In addition, Nasdaq is revising the routing functionality to comply with the Order Protection and Fair Access provisions of Regulation NMS. Routing functionality is available to System users between the hours of 7:00 a.m. and 8:00 p.m. Eastern Time. In general, the System provides users with four optional routing strategies for exchange-listed securities. These strategies are summarized below:

DOT (DOT). After checking the System for available shares, the order will be sent to various available market centers for potential execution, as instructed by entering firm. Any remaining un-executed portion will thereafter be sent to the NYSE or the American Stock Exchange, as appropriate, at the limit order price for posting. This strategy may only be used for orders with time-in-force parameters of either MDAY, MIOC, or market-on-open/close.

Example of DOT Routable Order:

- The current NBBO is \$10.00 bid x \$10.02 offer
- Offer size is as follows:
 - 300 shares System displayed
 - 200 shares System non-displayed
 - 100 shares PCX
 - 200 shares NYSE
- Participant A enters a buy order for 1,000 shares at 10.02
- Participant A will execute against 300 shares at 10.02 displayed and the 200 shares non-displayed
- The System will route the remaining shares to PCX
- Participant A will receive 100 shares from PCX
- The System will then route 400 shares to NYSE.
- Participant A will receive 200 shares from NYSE. The remaining 200 shares will reside on the NYSE book, per routing instructions.

SCAN/STGY/SPDY. In all of these routing options, after checking the System for available shares, orders will be sent to various available market centers for potential execution,

as instructed by the entering firm. For all these options, when checking the System book, the System will look to execute at the price it would send the order to a destination market center and, if any shares remain un-executed after routing, they are posted on the System book and are not sent to another market for posting.

Once returned to the System book after routing, an order with the SCAN designation will not be routed out to an accessible market center that subsequently locks or crosses the SCAN order. Orders with STGY and SPDY will be routed to an accessible market center that subsequently locks or crosses the STGY or SPDY order. While both STGY and SPDY orders will route to locking or crossing markets, the SPDY order will be re-priced by the System to match on then being displayed on the same side of the market by the locking or crossing market center (i.e., a buy order to the bid and a sell to the offer).

With the exception of the Minimum Quantity Order type, all time-in-force parameters and order types may be used with the STGY, SCAN, and SPDY routing options. Nasdaq states that orders routed by Nasdaq to another market do not retain time priority with respect to other orders in the System and Nasdaq continues to execute other orders while the routed order is away at another market. Nasdaq states that, once routed, an order becomes subject to the rules and procedures of the destination market including, but not limited to, short-sale regulation and order cancellation. Orders routed to a destination market that are subsequently returned in whole or in part to the System shall have their time priority based on the time they are returned to the System.

Example of STGY Routable Order:

- The current NBBO is \$10.00 bid x \$10.02 offer, size 200 shares at Chicago
- Nasdaq has a non-display offer of 500 shares at \$10.01

- Participant A enters an order into the System to buy 1,000 shares at \$10.02
- The System will first check the System book for any potential orders at \$10.02.
- Participant A will execute 500 shares on Nasdaq at \$10.01 (the non-display order on the book)
- The System will then route the order to Chicago at \$10.02
- 200 shares execute at Chicago at \$10.02
- 300 shares of the order remain unexecuted, and are entered onto the System book at \$10.02.
- 5 seconds later PCX enters the market with an offer of \$10.02 for 500 shares.
- The System will cancel the order off the book, and route 300 shares at \$10.02 to PCX
- PCX executes 300 shares at \$10.02
- Participant A receives an execution for the remaining 300 shares in the order

Example of STGY Routable Order (Crossed Market):

- The current NBBO is \$10.01 bid x \$10.00 offer
- The System has 500 shares on the offer at \$10.00
- PCX has 300 shares on the offer at \$10.00
- Participant A enters a Market Pegged Order to buy 1,000 shares
- The System will price the order at \$10.00 and IOC the System book
- Participant A will receive 500 shares at \$10.00
- The System will route the remaining shares to PCX
- Participant A will receive 300 shares at \$10.00 from PCX

- After attempting to exhaust the quotes, the remaining 200 shares will be posted to the System book at \$10.00

Example of SCAN Routable Order:

- The current NBBO is \$10.00 bid x \$10.02 offer, size 200 shares at PCX
- Nasdaq has a non-display offer of 500 shares at \$10.01
- Participant A enters an order onto Nasdaq to buy 1,000 shares at \$10.02
- The System will first IOC the Nasdaq book for any potential orders at or better than the limit price
- Participant A will execute 500 shares on Nasdaq at \$10.01 (the non-display order on the book)
- The System will route the order off the book with the remaining shares of the order, 500, to the PCX at \$10.02
- 200 shares execute at the PCX at \$10.02
- 300 shares of the order remain unexecuted, and are entered onto the System book at \$10.02
- 5 seconds later PCX enters the market with an offer of \$10.02
- The System will not route the order to PCX, but will keep the order on the System, per Participant A's routing instructions

Example of SPDY Routable Order (Crossed Market):

- The current NBBO is \$10.01 bid x \$10.00 offer
- Nasdaq has 1,000 shares on the offer at \$10.01
- PCX has 300 shares on the offer at \$10.00

- Participant A enters a Market Pegged Order to buy 1,000 shares
- After checking the System at \$10.00 and finding no orders, the System will route the 1,000 shares to PCX at \$10.00
- Participant A will receive 300 shares at \$10.00 from PCX
- The remaining 700 shares will be sent to the System book at \$10.01
- Participant A executes 700 shares at \$10.01 on the System

10. Book Processing

Nasdaq states that the System, like the INET Facility, will have a single execution algorithm based on price/time priority. Nasdaq states that new Nasdaq Rule 4757 is identical to current Nasdaq Rule 4955 governing the INET Facility. For each order, among equally-priced or better-priced trading interest, the System executes against available contra-side displayed share amounts in full, in price/time priority, before then moving to any non-displayed shares which are likewise executed in price/time priority.

Nasdaq believes that the System execution algorithm complies with the Order Protection and Access Rules, Rules 611 and 610, respectively of Regulation NMS. With respect to Intermarket Sweep Orders within the meaning of Rule 600(b)(30) of Regulation NMS, the System will execute them in price/time priority and the entering Participant will be responsible for compliance with Rules 610 and 611 of Regulation NMS.

Below are examples of this algorithm:

Displayed Order:

- The current NBBO is \$10.00 bid x \$10.02 offer
- Participant A enters a display order to buy 1,000 shares at \$10.01

- NBBO is changed to \$10.01 x \$10.02
- Participant B sees the 1,000 share order at \$10.01 and enters an order to sell 500 shares at \$10.01
- The orders match at \$10.01, with 500 shares matched
- NBBO remains at \$10.01 x \$10.02 with the size on the bid decremented to 500 shares, the amount of shares matched

Limit Order (with Reserve):

- The current NBBO is \$10.01 bid x \$10.02 offer
- Participant A enters an order to buy 1,000 shares, display 200, at \$10.01
- The System bid is \$10.01, 200 displayed, 800 non-displayed
- Participant B enters a display buy order for 1,000 shares at \$10.01
- The System bid is \$10.01, 1,200 displayed, 800 non-displayed
- Participant C enters an order to sell 1,500 shares at \$10.01
- Participant C receives executions against orders as follows:
 - Participant A executes 200 shares at \$10.01
 - Participant B executes 1,000 shares at \$10.01 (display order receives priority over non-display even though non-display order was there first)
 - Participant A executes 300 shares from non-display portion
- Participant C has executed a total of 1,500 shares
- Participant B has executed all 1,000 of its shares
- Participant A has 200 shares remaining in its order, and is now displayed, per original instructions

Routable Order:

- The current NBBO is \$10.00 bid x \$10.02 offer, size 200 shares at PCX
- Nasdaq has a non-display offer of 500 shares at \$10.01
- Participant A enters an order into Nasdaq to buy 1,000 shares at \$10.02
- The System will first check the System book for any potential orders at or better than the inside offer
- Participant A will execute 500 shares on Nasdaq at \$10.01 (the non-display order on the book)
- 500 shares of the order remain unexecuted, and are routed to PCX at \$10.02
- 200 shares execute at PCX
- 300 shares remain unexecuted and are entered onto the Nasdaq book at \$10.02

11. Adjustment of Open Orders

Nasdaq has determined that, in the event of a corporate actions related to a dividend, payment or distribution by the issuer of a System security, Nasdaq will automatically purge from the System all open quotes and/or orders on the ex-date of such actions, except where a cash dividend or distribution is less than one cent (\$0.01). Nasdaq's current approach to the adjustment of open orders varies depending upon whether: (1) the trading interest is a quotation, an order to buy, or an order to sell order; (2) the order is a round lot or odd lot, (3) the security is listed on Nasdaq, NYSE, or Amex, and (4) the corporate action is a stock dividend, cash dividend, split, or reverse split. Nasdaq currently believes that this function is more appropriately performed by individual Nasdaq members in consultation with their clients.

12. Phase-in Plan

Nasdaq currently expects to launch the Integrated System in time for the implementation of the Order Protection and Access Rules under Regulation NMS, currently scheduled for June 29, 2006. Nasdaq states that, ideally, it would implement the Integrated System in May of 2006, sufficiently far in advance of the re-constitution of the Russell indices to permit participants to enter the Nasdaq closing cross with the same confidence and with the same superior performance they have achieved in the past. Alternatively, Nasdaq states that it would implement the Integrated System in early July of 2006 to avoid impacting the reconstitution. Nasdaq, having determined that market participants generally prefer a rapid system roll-out over a protracted one, states that it plans to make a complete transition within three to four weeks of first launching the Integrated System, barring unforeseen circumstances.

13. Pricing

Nasdaq has filed a unified fee and rebate structure governing the use of the System.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act¹⁵ in general, and Section 6(b)(5) of the Act¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5). The statutory basis section in Nasdaq's proposed rule change inadvertently referenced 15 U.S.C. 78f(b)(6) and has been redesignated 15 U.S.C. 78f(b)(5). Telephone conversation on March 30, 2006 between Jeffrey Davis,

investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of the Act or the administration of the exchange.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq operates in an intensely competitive global marketplace for listings, financial products, transaction services, and market data. Relying on its array of services and benefits, Nasdaq competes for the privilege of providing market and listing services to broker-dealers and issuers. Nasdaq states that its ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency.

With these aspects of competition as a guide, Nasdaq states that it has designed its current proposal to create the fastest, fairest, most transparent, most efficient, and least expensive trading venue available for the trading of equity securities. Nasdaq believes that the proposed system will fuse the best functional elements from each of Nasdaq's three separate systems, including the automatic execution environment and speed of the INET and Brut Facilities, the Opening and Closing Crosses from the NMC Facility, and the liquidity from all three. Nasdaq believes that the resulting system will reduce overall trading costs and increase price competition, both pro-competitive developments. Nasdaq believes that the resulting system will have the pro-competitive effect of spurring further initiative and innovation among market centers and market participants.

Senior Associate General Counsel, Nasdaq, and David Liu, Attorney, Division, Commission.

Nasdaq states that market participants that disagree and do not view these developments as pro-competitive, will have the flexibility and choice to use only those functions that improve their trading or to not use the system at all; participation in the system in whole or in part is completely voluntary.

Nasdaq is proposing to discontinue some aspects of its current systems that harm Nasdaq's competitiveness, including the order delivery functionality of the NMC facility. Nasdaq states that the order delivery functionality harms Nasdaq's competitiveness against other exchanges and reduces the overall quality of its marketplace for the average participant. Nasdaq states that, with respect to other markets, Nasdaq's order delivery function is unique; no other exchange offers order delivery to its participants. Nasdaq states that providing order delivery is expensive, complex, and detrimental to system performance, thereby increasing the cost and complexity of Nasdaq's trading systems and decreasing its performance vis a vis Nasdaq's competitors. Because market participants cannot predict whether their orders will be delivered (slow) as opposed to automatically executed (fast), Nasdaq states that order delivery also discourages order flow providers to send orders to Nasdaq for processing and thereby harms Nasdaq's ability to compete with other markets operated by self-regulatory organizations that do not offer order delivery.

Moreover, Nasdaq believes that, within its own systems, the presence of order delivery negatively impacts the competition between market makers, ECNs/ATS, and agency broker-dealers that compete for retail and institutional order flow. Although Nasdaq will not itself engage in that competition, Nasdaq views this competition among its system participants as a major factor in the quality of its market. Nasdaq states that today, market makers and agency broker-dealers that are required to participate in Nasdaq via automatic execution view themselves as disadvantaged relative to ECNs and ATSs that can participate via either automatic execution or order delivery. Nasdaq

believes that eliminating order delivery functionality will level the playing field between market participants that compete within Nasdaq's system thereby increasing the attractiveness of Nasdaq's system to the largest number of investors and market participants and, in turn, improving Nasdaq's overall competitiveness as a market.

Nasdaq states that its ability to innovate and compete by providing the fastest, fairest, most efficient system possible is particularly important in light of the adoption of Regulation NMS. Regulation NMS highlights the importance of speed, accessible, and efficiency as well as the risks of delay, isolation and inefficiency. To remain competitive under Regulation NMS, Nasdaq, and all other market participants, will be required to continually evaluate their systems and business models in the manner Nasdaq has done here.

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Nasdaq consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-001 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).