

The NASDAQ Stock Market LLC (“Nasdaq”) is filing this partial amendment to SR-NASDAQ-2007-004, which was originally filed on January 30, 2007. In addition to responding to the official comments submitted to the Commission, Nasdaq will also respond to communications it had with industry members regarding the operation of NOM. Based upon those communications, Nasdaq has also proposed changes to the proposed rules that are limited to the following:

- (1) ***Nasdaq Rule 9216(b) and Nasdaq IM-9216:*** Nasdaq is proposing to add Options Rule Chapter X, Section 7 to the list of rules governed by Nasdaq’s existing Minor Rule Violations Plan pursuant to Section 19 of the Exchange Act. These rules govern (a) Position Limit violations for both customer accounts as well as the accounts of Options Participants that are NASDAQ members; (b) Order Entry violations regarding restrictions on orders entered by Market Makers, and (c) Continuous Quote violations regarding Market Maker continuous bids and offers. The provisions set forth in Chapter X, Section 7 are identical to rules adopted by the Boston Options Exchange and are included in the Minor Rule Violation Plan administered by that exchange. Upon implementation of this proposal, Nasdaq will include the enumerated options trading rule violations in Nasdaq’s standard quarterly report of actions taken on minor rule violations under the plan. The quarterly report includes: Nasdaq’s internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.
- (2) ***Chapter I, Section (1)(a)(21):*** Nasdaq is proposing to modify the definition of “Index Option” to include Narrow-Based and Micro Narrow-Based indexes which may be designated for trading pursuant to proposed Chapter XIV of the NOM Rules. Nasdaq’s proposed designation standards for broad-based and narrow-based indexes are consistent with the rules of the Boston Options Exchange, and its proposed standards for micro narrow-based indexes are consistent with the approved rules of the NYSE/Arca Exchange.
- (3) ***Chapter I, Section 1(a)(47):*** Nasdaq is proposing to change the definition of “primary market” to clarify that the primary market is the market identified by the applicable national market system plan governing the trading of the underlying security. In the case of Nasdaq-listed stocks, the applicable plan is known as the “Nasdaq UTP Plan” and for securities listed on other exchanges, the applicable plan is the Consolidated Tape Association Plan. Nasdaq believes that this clarification eliminates any uncertainty that might exist about the primary market when, for example, an underlying security is dually listed.
- (4) ***Chapter II, Section 1(b)(iii):*** Nasdaq is proposing to eliminate a provision stating that a Nasdaq member would automatically become a NOM Participant upon completing a NOM Application and paying the applicable fees. Nasdaq believes that this provision did not accurately reflect the intended scope of review

of NOM applicants, and that eliminating it will improve the quality of regulation of NOM.

- (5) **Chapter II, Section 2(g) and (h):** Nasdaq is proposing to add registration categories for limited purpose Registered Options Principals and Registered Options Representatives. Nasdaq inadvertently omitted these important registration categories that ensure proper operation and supervision of its members' options activities. The requirements in the proposed categories match the requirements set forth in approved FINRA Rule 2860.
- (6) **Chapter III, Section 4(f):** Nasdaq is proposing to modify the provision governing the misuse of material non-public information to clarify that members are prohibited from misusing their knowledge of non-displayed trading interest just as they are prohibited from misusing their knowledge of displayed interest. Nasdaq believes that this will improve the quality of regulation on NOM and ensure the fair and equitable treatment of all participants and their orders.

Nasdaq is also proposing to clarify that Nasdaq Regulation will perform various regulatory functions with respect to the trading of options on NOM. This will avoid any confusion about whether Nasdaq and NOM have different regulatory units, which they do not. It also will ensure that regulatory functions are performed by regulatory personnel. This change occurs in several places throughout the proposed rules.

- (7) **Chapter III, Sections 7 and 9:** Nasdaq is proposing to modify these provisions regarding Position and Exercise Limits to clarify that the incorporation of the rules of the Chicago Board Options Exchange applies only to the trading of options listed on both CBOE and Nasdaq. Nasdaq did not intend to apply the standards established by the CBOE to options that are not listed on the CBOE. This clarification will help ensure consistency between the various markets that trade the same series of options.
- (8) **Chapter III, Section 15:** Nasdaq is proposing to clarify that the review of significant business transactions set forth in this section applies exclusively to options clearing participants, and that significant business transactions for other Nasdaq members are subject to existing Nasdaq Rule 1017. Nasdaq is proposing this clarification to avoid uncertainty about the proper application of Nasdaq's proposed rules, and to recognize the unique status of options clearing participants.
- (9) **Chapter IV, Section 3:** Nasdaq is proposing to eliminate subsection (b)(v)(3) and to insert new subsection (k) which would permit Nasdaq to apply continued listing standards rather than initial listing standards to options classes that are already listed for trading on another options exchange. This provision is identical to the recently adopted rules of the Philadelphia and American Stock Exchanges.

- (10) **Chapter IV, Section 4:** Nasdaq is proposing to eliminate in subparagraph (a) an outdated reference to an application to delist options that is no longer required under the Exchange Act. Nasdaq is also proposing to clarify that if options contracts with respect to an underlying security are approved for listing and trading on NOM, such approval shall continue in effect until such approval is affirmatively withdrawn by NASDAQ Regulation. This will avoid the need for Nasdaq to requalify an options class each time the option becomes temporarily inactive on Nasdaq and will avoid placing unnecessary burdens on Nasdaq and its members.

Nasdaq is also proposing to amend subsections (h)(ii) and (i)(ii), governing Fund Shares and Trust Issued Receipts, to clarify that its review of the number of record holders will be conducted annually. Nasdaq notes that in the absence of a direct relationship with the issuers of these products is quite difficult to ascertain the number of record holders at a given point in time. Nasdaq is committed to acquiring the most accurate and up-to-date information available to conduct its review of continued listing compliance.

Finally, Nasdaq is proposing to modify subsection (j) to clarify that HOLDRs securities, based upon their unique structure, are properly considered a subset of Trust Issued Receipts and that monitoring for continued compliance with listing requirement should be considered separate from other Trust Issued Receipts.

- (11) **Chapter IV, Section 5:** Nasdaq is proposing to clarify that if it lists a class of options of a qualified underlying security but there is not at least one series of that options class open for trading on NOM, Nasdaq will place that options class into a non-regulatory suspension until one series is opened for trading.

In addition, Nasdaq is proposing to modify Chapter IV, Section 5 to clarify that NOM will not leave open for execution any option series in which there is no registered options market maker. In the event that the sole registered market maker for an options series withdraws its registration and ceases making markets, NOM will, in accordance with revised Chapter IV, Section 5, place that options series into a non-regulatory execution suspension until such time as a member registers to make markets in that series. In such circumstances, NOM will not execute orders on its book, and will have no rights and privileges under the Linkage Plan to accept inbound orders from away markets. Nasdaq will continue to accept and route member orders that are designated for routing and execution at the best price in away markets.

- (12) **Chapter IV, Section 6:** Nasdaq is proposing to amend subsections (b) and (e) to clarify that upon the commencement of trading of a class of options, Nasdaq will open a minimum of one series of options. Nasdaq had previously made this representation, but failed to reflect its intent accurately in its proposed rule.

In addition, Nasdaq proposes to amend Commentary .03 to clarify that it will participate in the \$2.50 Strike Price Pilot Program by trading options classes and series that have previously been designated by other options exchanges for participation in that pilot. When Nasdaq decides to designate new securities for inclusion in that pilot, it will file a proposed rule change pursuant to Section 19(b) of the Exchange Act.

- (13) **Chapter V, Section 6:** At the request of the Division of Market Regulation, Nasdaq is proposing to revise its Obvious Error rule to reduce the instances in which Nasdaq can exercise discretion in processing alleged Obvious Errors. Specifically, Nasdaq is eliminating its discretion to review potential obvious errors on its own motion, to lengthen or shorten applicable time frames for review, and to allow Nasdaq officers to exercise discretion to determine what events may be considered for resolution as Obvious Errors. Nasdaq is reducing to two the number of categories of events that may be considered Obvious Errors, both of which are already approved for inclusion in the rules of the CBOE and ISE. Nasdaq is also clarifying that a limited number of Nasdaq Officials will be trained to adjudicate Obvious Error filings and authorized to do so. Finally, Nasdaq is streamlining the process by which its Market Operations Review Committee will address appeals from determinations of Obvious Error filings. Nasdaq is making these changes to ensure that Obvious Error determinations are in accord with the determinations made by other options markets and to minimize the uncertainty and disruption faced by market participants that trade on multiple exchanges.
- (14) **Chapter V, Section 9:** Nasdaq is proposing to modify the NOM limitation of liability by cross referencing Nasdaq Rule 4626 which currently governs liability for use of Nasdaq systems. This change is intended to clarify that Nasdaq's liability to members for their use of NOM systems will be governed by Rule 4626 and that Nasdaq will concede no new incremental liability. Nasdaq believes that a uniform policy will ensure the fair and equal treatment of all Nasdaq members whether they trade equities, options, or both.
- (15) **Chapter VI, Section (1)(b):** Nasdaq is proposing to define Non-System Securities as those that are not currently trading on NOM pursuant to Chapter IV. For Non-System Securities, Nasdaq will accept orders for routing but will not execute any orders in the NOM System. System and Non-System securities will be clearly identified via the NOM data feed and in NOM's electronic daily list in a "File Transfer Protocol" file posted on the NOM website. In addition, the NOM System will be programmed to differentiate between System Securities and Non – System Securities and will process them each in accordance with the proposed NOM rules.
- (16) **Chapter VI, Section (1)(d)(3) et seq.:** In response to the comments received, Nasdaq is proposing to eliminate the Non-Displayed Order type from this proposal. This change occurs in several sections throughout this proposal.

Nasdaq will consider whether to re-file the Non-Displayed Order type as part of a separate proposed rule change.

- (17) **Chapter VI, Section 2 et. Seq.:** In response to SIFMA's concern regarding the unspecified closing time Nasdaq is proposing to amend Chapter VI, Section 2 to specify that the market will close at 4:00 p.m. Eastern Time ("E.T.") except that the market for options on fund shares or broad-based indexes will close at 4:15 p.m E.T. Nasdaq is also proposing to modify the system opening time from 8:00 a.m E.T. as originally proposed to 9:00 a.m E.T. This change occurs primarily in Chapter VI which governs the trading system, but does appear occasionally throughout the rule proposal.
- (18) **Chapter VI, Section 7:** Nasdaq is proposing to modify this provision to state clearly that neither an Order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If compliance with applicable Trade-Through and Locked and Crossed Markets restrictions requires that an order be routed, the order will be routed unless the order is designated by the member as non-routable in which case the order will be re-priced.
- (19) **Chapter VI, Section 8 and Section 10:** Nasdaq is proposing to change the way it will resume trading on NOM following a trading halt. Rather than run a Halt Cross, as originally proposed, Nasdaq proposes to open its system for regular processing at the conclusion of the trading halt in the underlying security. This is based upon feedback from industry participants that the market relies on price discovery from the underlying security rather than on the availability of interest in a cross.

Nasdaq is also proposing to amend Section 10 to clarify that execution in price/time priority means that the System will execute all trading interest at the best price level within the System before executing trading interest at the next best price. This is consistent with the manner in which Nasdaq's equity-trading system executes orders in price/time priority.

- (20) **Chapter VI, Section 9:** In response to ISE's and Amex's comments, Nasdaq will propose limited modifications to the Nasdaq Order Imbalance Indicator ("NOII") that is disseminated in advance of the proposed opening and closing crosses and not throughout the trading day. As such, the NOII disseminated prior to the Opening Cross is disseminated prior to 9:30 am when the SEC Quote Rule is not in effect. With respect to the Closing Cross, set forth in Chapter VI, Section 9 of the proposed NOM rules, Nasdaq will propose to modify the NOII to ensure that it fully complies with the SEC Quote Rule. This will require that the NOII data point known as the "Current Reference Price" (defined at subsection (a)(7)(A)) and the "Near Clearing Price" (subsection (a)(7)(E)(ii)) be disseminated in the minimum price increment applicable to the option in question and never at a price that would expose undisplayed interest on the NASDAQ book. Only the Current

Reference Price and Near Indicative Price is affected by this restriction because it is the only aspect of the NOII that may involve the dissemination of price information based on specific non-displayed trading interest resting on the NOM book. The remaining data elements of the NOII do not transmit information regarding the pricing of specific orders and therefore do not implicate the SEC Quote Rule.

Nasdaq is also proposing to amend Section 9 to provide that the Closing Cross will operate at 4:15 p.m. and that all other order entry and processing deadlines for the Closing Cross for ETFs will be set with reference to that market closing time. This will eliminate any uncertainty that Nasdaq intends to operate on the same schedule as other markets and will avoid unnecessary disruption of established trading patterns.

- (21) **Chapter VI, Section 11:** Nasdaq proposes to modify its Order Routing rule to establish that NOM's exclusive order router shall be NASDAQ Options Services LLC, a broker-dealer facility of Nasdaq. NASDAQ Options Services shall perform only two functions, the routing of orders with respect to System Securities (those that are currently trading on NOM) and the routing of orders in Non-System Securities (those that are not currently trading on NOM). NASDAQ Options Services shall be regulated as a facility of NASDAQ only with respect to the routing of orders in System Securities.

Whether routing orders for System or Non-System Securities, NASDAQ Options Services will be programmed to follow the algorithm and order type instructions established in the NOM rules, and it will have no discretion to change the terms of an order or the routing instructions that are entered by a member. One of those instructions is a members' instruction to make an order available for routing or not available for routing. Nasdaq is modifying Section 11 to state explicitly that such instructions are permitted.

- (22) **Chapter VI, Section 17:** Nasdaq is proposing to modify its Message Traffic Mitigation strategy to create a more meaningful set of limits. The proposed limits conform to limits imposed by other options markets pursuant to their SEC-approved trading rules. Nasdaq notes that the enumerated traffic mitigation steps are in addition to Nasdaq's overall approach of limiting message traffic by listing and trading options series rather than classes. Nasdaq believes that by permitting market makers to quote and trade in only those securities in which they are interested, Nasdaq will substantially reduce the overall message traffic from its market. The incremental steps described in Section 17 should give Nasdaq tools to further reduce message traffic. Nasdaq is also clarifying that for options series traded solely on NOM, NASDAQ will delay delisting until there is no open interest in that options series.

In addition to the limits expressed in the proposed rule, if NOM detects that a Participant is disseminating significantly more quotes than is normal for that Participant, NOM will contact that participant and alert it to such activity. Such

- monitoring may reveal that Participant to have internal system issues or incorrectly-set system parameters that would not be immediately apparent. NOM believes that, even without uncovering problems, alerting a Participant to possible excessive quoting will lead the Participant to take steps to reduce the number of its quotes.
- (23) **Chapter VII, Section 6:** Nasdaq is proposing to modify the language imposing the requirement that Market Maker publish a minimum of 10 contracts on each side of the market to clarify that the requirement applies only to the best bid and best offer from each Market Maker. Market Makers will be free to enter trading interest of less than 10 contracts for quotations that are inferior in price to the best bid and best offer.
- (24) **Chapter VII, Section 7(b):** Nasdaq is proposing to clarify that the reports of orders shall be furnished upon request of NOM rather than automatically. This proposal conforms to the approved rules of the ISE and BOX. Nasdaq is also proposing to add Commentary .01 which is based upon the approved rules of NYSEArca, Inc.
- (25) **Chapter VII, Section 11 (foremer):** Nasdaq is proposing to eliminate the proposed rule governing short selling. This rule is no longer required due to the SEC's amendment of Regulation SHO which eliminated all price tests for short sales.
- (26) **Chapter VII, Section 11 (current):** Nasdaq is proposing to eliminate the Panic Quote and replace it with a Mass Cancellation function that is better suited to Nasdaq's System. Nasdaq believes that the Mass Cancellation functionality will have the same effect of regulating conduct on NOM that the Panic Quote has in regulating the conduct on markets that have adopted it.
- (27) **Chapter VII, Section 12:** Nasdaq will respond to the comments of both ISE and Citadel by proposing to modify two key aspects of its order exposure requirements set forth in proposed Chapter VII Section 12 and attendant commentaries. First, Nasdaq is proposing to amend Commentary .03 to remove the statement that the order exposure requirement is satisfied if non-displayed trading interest is entered into the System and would have been displayed for three seconds but for its non-display status. Second, Nasdaq is proposing to amend Commentary .04 by prohibiting communication regarding the entry of an order both prior to the entry *and* afterwards, as suggested by the commentors. Nasdaq believes that these three modifications adequately address the commentors' underlying concerns by establishing a check on internalization that resembles those that exist in currently-approved markets.
- (28) **Chapter VIII, Section (1)(b) and (d):** Nasdaq is proposing to require that NOM Participants submit Contrary Exercise Advice filings to the Options Clearing Corporation rather than to NOM. It is unnecessary to submit the filings to NOM

because OCC already sends a monthly batch file of contrary exercises that NOM will process through its regulatory systems. NOM's processing of the OCC batch file will generate an alert for further regulatory investigation by FINRA as Nasdaq's service provider. Thus, FINRA can perform all appropriate surveillance of such Exercises without the need for members to make duplicate filings to Nasdaq.

- (29) **Chapter XIV, Section 7:** Nasdaq is amending this section to clarify the applicable position limits for Micro Narrow-Based Indexes, which was inadvertently omitted in the original proposal. The position limits for Micro Narrow-Based Indexes are identical to those approved by the Commission for use on NYSE/Arca.
- (30) Nasdaq is proposing various technical and "house keeping" changes to the proposed rules, including renumbering various provisions, adjusting capitalization, and adjusting cross-references. These edits are both too numerous and too inconsequential to detail.

Attached to this partial amendment is an amended Exhibit 5 which sets forth the proposed rules governing the NASDAQ Options Market, including the changes described above.

**EXHIBIT 5****IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

- Rules 2210 and 2211 and IM-2210-1, -2210-4 — Communications with the public.
- Rule 3360 — Failure to timely file reports of short positions on Form NS-1.
- Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of Nasdaq.
- Rule 8211 — Failure to submit trading data as requested.
- Rule 1013 — Failure to timely submit amendments to Form BD.
- Rule 1031 — Failure to timely submit amendments to Form U4.
- Rule 1013 — Failure to timely submit amendments to Form U5.
- Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.
- Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.
- Rule 3070 — Failure to timely file reports.
- Rule 4619(e) — Failure to timely file notifications pursuant to SEC Regulation M.
- Rules 6954 and 6955 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- Failure to provide or update contact information as required by Nasdaq Rules.

- NASDAQ Options Market Rules, Chapter X, Section 7 – Penalty for Minor Rule

Violations for Options Trading

- SEC Exchange Act Rule 604 — Failure to properly display limit orders.
- SEC Exchange Act Rule 602(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks ("ECN. . .s").
- SEC Exchange Act Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.
- SEC Exchange Act Rule 17a-10 — Failure to timely file Schedule I.

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**NASDAQ Options Market LLC**

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## CHAPTER I. GENERAL PROVISIONS

### Sec. 1 Definitions

(a) With respect to these NOM Rules, the following terms shall have the meanings specified in this Section 1. A term defined elsewhere in the Rules of the Exchange shall have the same meaning with respect to this Chapter I, unless otherwise defined below.

(1) The term "**aggregate exercise price**" means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.

(2) The term "**American-style option**" means an options contract that, subject to the provisions of Chapter VIII, Section 1 of these NOM Rules (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, may be exercised at any time from its commencement time until its expiration.

(3) The term "**associated person**" or "**person associated with a Participant**" means any partner, officer, director, or branch manager of an Options Participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Participant or any employee of a Participant.

(4) The term "**bid**" means a limit order to buy one or more options contracts.

(5) The term "**Board**" means the Board of Directors of The NASDAQ Stock Market LLC.

(6) The term "**call**" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(7) The term "**class of options**" means all options contracts of the same type and style covering the same underlying security.

(8) The term "**Clearing Corporation**" means The Options Clearing Corporation.

(9) The term "**Clearing Participant**" means a Participant that is self-clearing or a Participant that clears NOM Transactions for other Participants of NOM.

(10) The term "**closing purchase transaction**" means a NOM Transaction that reduces or eliminates a short position in an options contract.

(11) The term "**closing writing transaction**" means a NOM Transaction that reduces or eliminates a long position in an options contract.

(12) The term "**covered short position**" means (i) an options position where the obligation of the writer of a call option is secured by a "specific deposit" or an "escrow deposit" meeting the conditions of Rules 610(f) or 610(g), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) an options position where the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

(13) The term "**Customer**" means a Public Customer or a broker-dealer.

(14) The term "**Customer Order**" means an agency order for the account of a Public Customer, as defined herein or a broker-dealer.

(15) The term "**discretion**" means the authority of a broker or dealer to determine for a Customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.

(16) The term "**European-style option**" means an options contract that, subject to the provisions of Chapter VIII, Section 1 of these Rules (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.

(17) The term "**Exchange**" means the NASDAQ Stock Market LLC.

(18) The term "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or Rules thereunder.

(19) The term "**exercise price**" means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.

(20) The terms "**he**," "**him**" or "**his**" shall be deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.

(21) The term "**index option**" means an options contract that is an option on a broad-based, narrow-based or micro narrow-based index of equity securities prices.

(22) The term "**individual equity option**" means an options contract which is an option on an equity security.

(23) The term "**long position**" means a person's interest as the holder of one or more options contracts.

(24) The term "**MarketWatch**" means a unit within NASDAQ Regulation that is responsible for the real-time surveillance and regulation of the trading of options on NOM.

(25) The terms "**NASDAQ Options Order Entry Firm**" or "**Order Entry Firm**" or "**OEF**" mean those Options Participants representing as agent Customer Orders on NOM and those non-Market Maker Participants conducting proprietary trading.

(26) The term "**NASDAQ Options Market Maker**" or "**Options Market Maker**" means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of these Rules.

(27) The term "**NASDAQ Rules**" means the Rules of the NASDAQ Stock Market LLC.

(28) The term "**NOM**" means the NASDAQ Options Market or NASDAQ Stock Exchange Options Market, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.

(29) The term "**NOM Book**" means the electronic book of orders maintained by the NOM Trading System.

(30) The term "**NOM Rules**" or "**Rules of NOM**" means the Rules of the NASDAQ Options Market.

(31) The term "**NOM Transaction**" means a transaction involving an options contract that is effected on or through NOM or its facilities or systems.

(32) The term "**NASDAQ Regulation**" means the Department of NASDAQ that supervises and administers the regulatory functions of NASDAQ, including the administration of any regulatory services agreements with another self-regulatory organization to which NASDAQ is a party.

(33) The term "**NBBO**" means the national best bid or offer as calculated by NOM based on market information received by NOM from OPRA.

(34) The term "**offer**" means a limit order to sell one or more options contracts.

(35) The term "**opening purchase transaction**" means a NOM Transaction that creates or increases a long position in an options contract.

(36) The term "**opening writing transaction**" means a NOM Transaction that creates or increases a short position in an options contract.

(37) The term "**options contract**" means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

(38) The term "**options market close**" or "**market close**" means the time specified by NOM for the cessation of trading in contracts on NOM for options on that market day.

(39) The term "**options market open**" or "**market open**" means the time specified by NOM for the commencement of trading in contracts on NOM for options on that market day.

(40) The term "**Options Participant**" or "**Participant**" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of participating in options trading on NOM as a "NASDAQ Options Order Entry Firm" or "NASDAQ Options Market Maker".

(41) The term "**Options Principal**" means a person engaged in the management and supervision of the Options Participant's business pertaining to options contracts that has responsibility for the overall oversight of the Options Participant's options related activities on the Exchange.

(42) The term "**Options Participation Agreement**" means the agreement to be executed by Options Participants to qualify to participate on NOM.

(43) The term "**OPRA**" means the Options Price Reporting Authority.

(44) The term "**order**" means a firm commitment to buy or sell options contracts as defined in Section 1(d) of Chapter VI.

(45) The term "**outstanding**" means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

(46) The term "**pre-opening**" means the period prior to the market open on NOM, beginning at a time specified by NOM, during which Participants may log on to the Trading System and submit, amend and withdraw orders, but no trading can occur.

(47) The term "**primary market**" means, in the case of securities listed on Nasdaq, the market that is identified as the listing market pursuant to Section X(d) of the approved national market system plan governing the trading of Nasdaq-listed securities, and, in the case of securities listed on another national securities exchange, the market that is

identified as the listing market pursuant to Section XI of the Consolidated Tape association Plan.

(48) The term "**Public Customer**" means a person that is not a broker or dealer in securities.

(49) The term "**Public Customer Order**" means an order for the account of a Public Customer.

(50) The term "**put**" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option and the Rules of the OCC, to sell to the Clearing Corporation the number of units of the underlying security covered by the options contract, at a price per unit equal to the exercise price, upon the timely exercise of such option.

(51) The term "**quote**" or "**quotation**" means a bid or offer entered by a Market Maker as a firm order that updates the Market Maker's previous bid or offer, if any.

(52) The term "**Responsible Person**" shall mean a United States- based officer, director or management-level employee of an Options Participant, who is registered with the Exchange as an Options Principal, responsible for the direct supervision and control of associated persons of that Options Participant.

(53) The term "**Rules of the Clearing Corporation**" or "**Rules of the OCC**" means the Certificate of Incorporation, the By-Laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as may be in effect from time to time.

(54) The term "**SEC**" or "**Commission**" means the United States Securities and Exchange Commission.

(55) The term "**series of options**" means all options contracts of the same class of options having the same exercise price and expiration date.

(56) The term "**short position**" means a person's interest as the writer of one or more options contracts.

(57) The term "**SRO**" means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

(58) The term "**Trading System**" means the automated trading system used by NOM for the trading of options contracts.

(59) The term "**type of option**" means the classification of an options contract as either a put or a call.

(60) The term "**uncovered**" means a short position in an options contract that is not covered.

(61) The term "**underlying security**" means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.

## **Sec. 2 Applicability**

(a) These are the NASDAQ Rules applicable to the trading of options contracts issued by The Options Clearing Corporation through NOM, NASDAQ's options trading facility, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading on NOM.

(b) Except to the extent that specific NOM Rules govern or unless the context otherwise requires, the provisions of the NASDAQ Rules shall be applicable to Options Participants and to the trading of option contracts on NOM and, for purposes of their application with respect to Options Participants and options trading, shall be interpreted in light of the nature of options trading and the NOM market, and the fact that options on NOM shall be traded electronically through the Trading System. To the extent that the provisions of the NOM Rules are inconsistent with any other provisions of the NASDAQ Rules, the NOM Rules shall control.

(c) For the purposes of cross-referencing, interpreting and applying NASDAQ Rules to the NOM Rules: 1) a reference to "members" of NASDAQ shall be functionally equivalent to "Participants" in NOM, whether NOM Market Makers, Order Entry Firms or both.

(d) For marketing and other purposes, the NASDAQ Options Exchange Facility may be referred to as the "NASDAQ Stock Market Options Exchange" or "NASDAQ Options Market" or "NOM".

(e) These Rules generally require Options Participants conducting business with the public to comply with applicable requirements of the United States federal securities laws and regulations promulgated thereunder by the Securities and Exchange Commission. To the extent that certain aspects of the federal securities laws and regulations promulgated thereunder do not apply to non-U.S. firms conducting business with non-U.S. customers, these Rules shall be interpreted accordingly, so long as such interpretation is consistent with the maintenance of a fair and orderly options market. In such case, however, such non-U.S. Options Participants must comply with all reasonably comparable laws and regulations of their home countries or of the home countries of their customers, as applicable.

**Sec. 3 Regulation of NASDAQ and Its Members**

NASDAQ and the Financial Industry Regulatory Authority (“FINRA”) are parties to the Regulatory Services Agreement, dated as of June 28, 2000, as amended (“Regulatory Contract”). Pursuant thereto, FINRA has agreed to perform certain functions described in these Rules on behalf of NASDAQ. NOM Rules that refer to NASDAQ Regulation, NASDAQ Regulation staff, NOM staff, and NOM departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of NASDAQ pursuant to the Regulatory Contract.

Notwithstanding the fact that NASDAQ has entered into the Regulatory Contract with FINRA to perform some of NASDAQ’s functions, NASDAQ shall retain ultimate legal responsibility for, and control of, such functions.

In addition, NASDAQ has incorporated by reference certain FINRA rules. NASDAQ members shall comply with these rules and interpretations as if such rules and interpretations were part of NASDAQ’s rules.

## **CHAPTER II. PARTICIPATION**

### **Sec. 1 Options Participation**

(a) These Rules establish a new category of NASDAQ member participation called "Options Participant." Only Options Participants may transact business on NOM via the Trading System. Options Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these NOM Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of Customers.

(b) A prospective Options Participant must:

i. complete an Options Participant Application in the form prescribed by the Exchange;

ii. provide such other information as required by the Exchange;

iii. be an existing member or become a member of the Exchange, pursuant to the 1000 rules series, and continue to abide by the requirements of the 1000 Series with respect to participation in NOM.; and

iv. enter into an Options Participant Agreement in the form specified by the Exchange, agree to abide by the same as it has been or shall be from time to time amended, and pledge to abide by the Rules of the Exchange as amended from time to time, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Rules of the Exchange; and

v. be under the supervision and control of a Responsible Person.

(c) Upon completion of the application, the Exchange, or person(s) designated by the Exchange ("designee") shall consider whether to approve the application, unless there is just cause for delay. In its consideration process, the Exchange may conduct such investigation as it deems appropriate and may take such steps as it deems necessary to confirm the information provided by the applicant. Within 30 days after the Exchange or its designee has completed its consideration of an application, it shall provide written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefore.

(d) These NOM Rules place no limit on the number of qualifying entities that may become Options Participants. However, based on system constraints or capacity restrictions, approval of qualifying applications for Options Participants may, in limited circumstances, be temporarily deferred. To the extent that the Board places limitations on otherwise qualified applicants to act as Options Participants, such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Exchange Act.

(e) Options Participant status cannot be leased or transferred except in the event of a change in control or corporate reorganization involving an Options Participant. In such a case, Options Participant status may be transferred to a qualified affiliate or successor upon written notice to the Exchange or its designee.

(f) Every Options Participant shall file with NOM and keep current an address where notices may be served, including current addresses of each Responsible Person, as specified in Paragraph (b)(v) of this Section 1.

## **Sec. 2 Requirements for Options Participation**

(a) Options Participants may be corporations, partnerships, limited liability companies or sole proprietorships organized under the laws of a jurisdiction of the United States, or such other jurisdictions as the Exchange may approve.

(b) Options Participants must be Options Clearing Participants or establish a clearing arrangement with a Clearing Participant.

(c) Options Participants must have demonstrated ability to adhere to all applicable Exchange, SEC, Clearing Corporation and Federal Reserve Board policies, rules and regulations related to the trading of options, including those concerning record-keeping, reporting, finance and trading procedures and be able to satisfactorily demonstrate reasonably adequate systems capability and capacity.

(d) All associated persons of Options Participants who are not themselves Responsible Persons must be under the supervision of a U.S.-based Responsible Person.

(e) Every Options Participant shall have as the principal purpose of being a Participant the conduct of a securities business. Such a purpose shall be deemed to exist if and so long as:

i. the Participant has qualified and acts in respect of its business on NOM as either an OEF or a Options Market Maker, or both; and

ii. all transactions effected by the Participant are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder.

(f) Every Options Participant shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. Options Participants that transact business with customers shall at all times be members of the FINRA.

### **(g) Limited Principal—Registered Options and Security Futures**

(1) Every member that is engaged in, or that intends to engage in transactions in security futures or put or call options with Public Customers shall have at least one

Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. As to options transactions, each member shall also designate a Senior Registered Options Principal and a Compliance Registered Options Principal and identify such persons to NASDAQ. Every person engaged in the management of the day-to-day options or security futures activities of a member shall also be registered as a Registered Options and Security Futures Principal.

(2) Each person required by subparagraph (g)(1) to be a Registered Options and Security Futures Principal shall pass the appropriate Qualification Examination for Registered Options and Security Futures Principal, or an equivalent examination acceptable to NASDAQ, for the purpose of demonstrating an adequate knowledge of options and security futures trading generally, the Rules of NASDAQ applicable to trading of option and security futures contracts and the rules of registered clearing agencies for options and security futures, and be registered as such before engaging in the duties or accepting the responsibilities of a Registered Options and Security Futures Principal.

(3) Each person required to register and qualify as a Registered Options and Security Futures Principal must, prior to or concurrent with such registration, be or become qualified pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative—Corporate Securities and a Registered Options and Security Futures Representative.

(4) A person registered solely as a Registered Options and Security Futures Principal shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1).

(5) Any person who is registered as a Registered Options and Security Futures Principal, or who becomes registered as a Registered Options and Security Futures Principal before a revised examination that includes security futures products is offered, must complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures before such person can supervise security futures activities. After a revised examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Registered Options and Security Futures Principal (or any other examination covering security futures that is acceptable to NASDAQ) is not required to complete a firm-element continuing education program that addresses security futures and a principal's responsibilities for security futures to supervise activities in such products, except as otherwise required by Rule 1120 generally or by the member firm. Any Registered Options and Securities Futures Principal who intends to qualify to supervise security futures activities by completing a firm-element continuing education program must complete such a program by December 31, 2009. Any Registered Options and Securities Futures Principal who has not completed a firm-element continuing education program by that date will be required to pass an appropriate qualification examination covering security futures to supervise security futures activities.

**(h) Limited Representative—Options and Security Futures**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 may register with NASDAQ as a Limited Representative—Options and Security Futures if:

(A) such person's activities in the investment banking or securities business of the member involve the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Act, for the account of a broker, dealer or public customer; and

(B) such person passes an appropriate qualification examination for Limited Representative—Options and Security Futures.

(2) Each person seeking to register and qualify as a Limited Representative—Options and Security Futures must, concurrent with or before such registration may become effective, become registered with NASDAQ or another SRO as either as a Limited Representative—Corporate Securities or Limited Representative—Government Securities.

(3) A person registered as a Limited Representative—Options and Security Futures shall not be qualified to function in any area not described in subparagraph (1)(A) hereof.

(4) Any person who is registered with NASDAQ as a Limited Representative—Options and Security Futures, or who becomes registered as a Limited Representative—Options and Security Futures before a revised examination that includes security futures is offered, must complete a firm-element continuing education program that addresses security futures. After a revised examination that includes security futures products is offered, a person associated with a member who passes such a revised Qualification Examination for Limited Representative—Options and Security Futures (or any other examination covering security futures that is acceptable to NASDAQ) is not required to complete a firm-element continuing education program that addresses security futures to act as a limited representative with regard to such products, except as otherwise required by Rule 1120 generally or by the member firm. Any Limited Representative—Options and Security Futures who intends to qualify as a Limited Representative with regard to security futures products by completing a firm-element continuing education program must complete such a program by December 31, 2009. Any Limited Representative—Options and Security Futures who has not completed a firm-element continuing education program by that date will be required to pass an appropriate qualification examination covering security futures to engage in security futures activities.

**Commentary .01. Limited Principal—Registered Options and Security Futures**

Members having a single Registered Options and Security Futures Principal are required promptly to notify NASDAQ in the event such person is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of an Options and Security Futures Principal.

Following receipt of such notification, NASDAQ will require members to agree, in writing, to refrain from engaging in any options- or security futures-related activities that would necessitate the prior or subsequent approval of an Options and Security Futures Principal including, among other things, the opening of new options or security futures accounts or the execution of discretionary orders for option or security futures contracts until such time as a new Registered Options and Security Futures Principal has been qualified.

Members failing to qualify a new Registered Options and Security Futures Principal within two weeks following the loss of their sole Registered Options and Security Futures Principal, or by the earliest available date for administration of the Registered Options and Security Futures Principal examination, whichever is longer, shall be required to cease doing an options and security futures business; provided, however, they may effect closing transactions in options and offsetting transactions in security futures to reduce or eliminate existing open options or security futures positions in their own account as well as the accounts of their customers.

### **Sec. 3 Persons Associated with Options Participants**

(a) Persons associated with Options Participants shall be bound by the Rules of the Exchange and the Rules of the Clearing Corporation.

(b) Each Options Participant shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Options Participant who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U- 4).

### **Sec. 4 Good Standing for Options Participants**

(a) To remain in good standing, all Options Participants must:

i. continue to satisfy the qualification requirements specified by the Exchange, as amended from time to time by the Exchange;

ii. comply with the Rules of the Exchange; and

iii. pay on a timely basis such participation, transaction and other fees as the Exchange and/or NOM shall prescribe.

(b) The good standing of an Options Participant may be suspended, terminated or otherwise withdrawn, as provided in the NASDAQ 9550 Rules, if any of the conditions of Section 2 or 3 of this Chapter II are not met or the Options Participant violates any of its agreements with the Exchange and/or NOM or any of the provisions of the Exchange Rules.

(c) Unless an Options Participant is in good standing, the Participant shall have no rights or privileges of options participation except as otherwise provided by law or the Rules, shall not hold himself or itself out for any purpose as a Participant, and shall not deal with the Exchange and/or NOM on any basis except as a non-Participant.

## **CHAPTER III. BUSINESS CONDUCT**

### **Sec. 1 Adherence to Law**

No Options Participant shall engage in conduct in violation of the Exchange Act or Rules thereunder, the Rules of the Exchange or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transaction, or any written interpretation thereof. Every Options Participant shall supervise persons associated with the Participant to assure compliance therewith.

### **Sec. 2 Conduct and Compliance with the Rules**

(a) Each Options Participant shall be responsible for ensuring that all arrangements made and systems used in connection with business conducted on NOM, and the transaction of such business itself, comply with the Options Participant's and associated persons' obligations under the Rules of the Exchange, the Rules of the Clearing Corporation and any other relevant laws, rules, interpretations and obligations. In accordance with the NOM Rules and in connection with business conducted on NOM, each Options Participant shall:

i. have adequate arrangements to ensure that all staff involved in the conduct of business on NOM are suitable, adequately trained and properly supervised;

ii. be responsible for the acts and conduct of each associated person,

iii. establish its trading arrangements such that each Participant is able to meet the requirements set out in Section 1 of this Chapter and that all other relevant obligations contained in the Rules are complied with;

iv. implement suitable security measures such that only those individuals explicitly authorized by the Options Participant to trade may gain access to passwords and security keys; and

v. ensure that any trading access granted to individuals (whether employees of the Options Participant or otherwise), for example by way of order routing systems, is adequately controlled and supervised, including appropriate checks before any orders are submitted to the Trading System.

### **Sec. 3 Rumors**

No Options Participant or person associated with an Options Participant shall circulate, in any manner, rumors of a character which might affect market conditions in any security; provided, however, that this Section shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.

### **Sec. 4 Prevention of the Misuse of Material Nonpublic Information**

(a) Every Options Participant shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant in violation of the federal securities laws or the Rules thereunder, and the Rules of the Exchange.

(b) Misuse of material nonpublic information includes, but is not limited to:

i. trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation;

ii. trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and

iii. disclosing to another person any material nonpublic information involving a corporation whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

(c) Each Options Participant shall establish, maintain and enforce the following policies and procedures as appropriate for the nature of each Participant's business:

i. All associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information.

ii. Signed attestations from the Participant and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place.

iii. Records of all brokerage accounts maintained by the Participant and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Participant for the purpose of detecting the possible misuse of material nonpublic information.

iv. Any business dealings the Participant may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Participant receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.

(d) Participants that are required to file Form X-17A-5 under the Exchange Act or Rules thereunder, with the Exchange on an annual basis only, shall, contemporaneously with

those submissions, file attestations signed by such Participants stating that the procedures mandated by this Section have been established, enforced and maintained.

(e) Any Options Participant or associated person who becomes aware of any possible misuse of material nonpublic information must promptly notify NASDAQ Regulation.

(f) It may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of:

- (i) an order and a solicited order,
- (ii) an order being facilitated or submitted to NOM for price improvement (e.g... price improving orders) , or
- (iii) orders being crossed;

the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The terms of an order are "disclosed" to NOM Option Participants when the order is entered into the NOM Book. For purposes of this Paragraph (f), an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

### **Sec. 5 Disciplinary Action by Other Organizations**

Every Options Participant shall promptly notify NASDAQ Regulation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or registered securities association, clearing corporation, commodity futures market or government regulatory body against the Options Participant or its associated persons who are directly involved in derivatives trading, and shall similarly notify NASDAQ Regulation of any disciplinary action taken by the Options Participant itself against any of its associated persons who are directly involved in derivatives trading involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities.

### **Sec. 6 Other Restrictions on Participants**

Whenever the Exchange shall find that an Options Participant has failed to perform on its contracts or is insolvent or is in such financial or operational condition or is otherwise

conducting business in such a manner that it cannot safely conduct business with Customers, creditors or the Exchange, the Exchange may summarily suspend the Options Participant in accordance with Chapter X (Summary Suspension) or may impose such conditions and restrictions upon the Options Participant as the Exchange considers reasonably necessary for the protection of the Exchange, NOM, and the Customers of such Options Participant.

### **Sec. 7 Position Limits**

(a) No Options Participant shall make, for any account in which it has an interest or for the account of any Customer, an opening transaction on any exchange if the Options Participant has reason to believe that as a result of such transaction the Options Participant or its Customer would, acting alone or in concert with others, directly or indirectly:

i. exceed the applicable position limit fixed from time to time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange or

(ii) exceed the position limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange; or

iii. exceed the applicable position limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options Participant is not a member of the other exchange on which the transaction was effected.

(b) Should an Options Participant have reason to believe that a position in any account in which it has an interest or for the account of any Customer of such Options Participant is in excess of the applicable limit, such Options Participant shall promptly take the action necessary to bring the position into compliance.

### **Sec. 8 Exemptions from Position Limits**

An Options Participant may rely upon any available exemptions from applicable position limits granted from time to time by another Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides NASDAQ Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for NASDAQ Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to its trading on NOM.

### **Sec. 9 Exercise Limits**

(a) No Options Participant shall exercise, for any account in which it has an interest or for the account of any Customer, a long position in any options contract where such Options Participant or Customer, acting alone or in concert with others, directly or indirectly, has or will have:

(i). exceeded the applicable exercise limit fixed from time to time by the Chicago Board Options Exchange for any options contract traded on NOM and the Chicago Board Options Exchange; or

(ii) exceed the exercise limit fixed by NOM from time to time for any options contract traded on NOM but not traded on the Chicago Board Options Exchange;

(iii). exceeded the applicable exercise limit fixed from time to time by another exchange for an options contract not traded on NOM, when the Options Participant is not a member of the other exchange on which the transaction was effected.

(b) an Options Market Maker that has been granted an exemption to position limits pursuant to Section 8 of this Chapter III (Exemption to Position Limits), the number of contracts which can be exercised over a five (5) business day period shall equal the Market Maker's exempted position.

### **Sec. 10 Reports Related to Position Limits**

Each Options Participant shall maintain and furnish to NASDAQ Regulation all reports required by the applicable rule of any Options Exchange of which it is a member with respect to reports related to position limits.

### **Sec. 11 Liquidation Positions**

(a) Whenever NASDAQ Regulation shall find that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all options contracts or one or more classes or series traded on NOM in excess of the applicable position limit established pursuant to Section 7 of this Chapter III (Position Limits), it may order all Options Participants carrying a position in options contracts of such classes or series for such person or persons to liquidate such positions as expeditiously as possible, consistent with the maintenance of a fair and orderly market.

(b) Whenever such an order is given, no Options Participant shall accept any order to purchase, sell or exercise any options contract for the account of the person or persons named in the order, unless and until NASDAQ Regulation expressly approves such person or persons for options transactions.

### **Sec. 12 Other Restrictions on Options Transactions and Exercises**

(a) NOM may impose such restrictions on transactions or exercises in one or more

series of options of any class traded on NOM as NASDAQ Regulation in its judgment deems advisable in the interests of maintaining a fair and orderly market in options contracts or in underlying securities, or otherwise deems advisable in the public interest or for the protection of investors.

i. During the effectiveness of such restrictions, no Options Participant shall, for any account in which it has an interest or for the account of any Customer, engage in any transaction or exercise in contravention of such restrictions.

ii. Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, other than index options, no restriction on exercise under this Section may be in effect with respect to that series of options. With respect to index options, restrictions on exercise may be in effect until the opening of business on the last business day before the expiration date.

iii. Exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

1) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by NASDAQ Regulation, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension;

2) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration;

3) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern time. In addition, if trading resumes following such a trading halt pursuant to the procedure described in Section 4 of Chapter V of these Rules, exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (a)(iii)(3) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to paragraph (a) of this Rule; and

4) NOM may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

(b) Whenever the issuer of a security underlying a call option traded on NOM is engaged or proposes to engage in a public underwritten distribution ("public distribution") of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that NOM impose restrictions upon all opening writing transactions in such options at a "discount" where the resulting short position will be uncovered ("uncovered opening writing transactions").

i. In addition to a request, the following conditions are necessary for the imposition of restrictions:

1) less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;

2) the underwriters agree to notify NASDAQ Regulation upon the termination of their stabilization activities; and

3) the underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a "minus" or "zero minus" tick.

ii. Upon receipt of such a request and determination that the conditions listed above are met, NASDAQ Regulation shall impose the requested restrictions as promptly as possible but no earlier than fifteen (15) minutes after Participants shall have been notified and shall terminate such restrictions upon request of the underwriters or when NASDAQ Regulation otherwise discovers that stabilizing transactions by the underwriters has been terminated.

iii. For purposes of paragraph (b) of this Section 12, an uncovered opening writing transaction in a call option will be deemed to be effected at a "discount" when the premium in such transaction is either:

1) in the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters' stabilization bid for the underlying security exceeds the exercise price of such option; or

2) in the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters' stabilization bid in the underlying security at the subscription price exceeds the exercise price of such option.

### **Sec. 13 Mandatory Systems Testing**

(a) Each Options Participant that NASDAQ designates as required to participate in a system test must conduct or participate in the testing of its computer systems to ascertain the compatibility of such systems with the Exchange's systems in the manner and frequency prescribed by the Exchange. NASDAQ will designate Options Participants as required to participate in a system test based on: (1) the category of the Participant (Market Maker and OEF); (2) the computer system(s) the Participant uses; and (3) the manner in which the Participant connects to the Exchange. NASDAQ will give Participants reasonable notice of any mandatory systems test, which notice will specify the nature of the test and Participants' obligations in participating in the test.

(b) Every Options Participant required by NASDAQ to conduct or participate in testing of computer systems shall provide to the Exchange such reports relating to the testing as the Exchange may prescribe. Participants shall maintain adequate documentation of tests required by this Section 13 and results of such testing for examination by the Exchange.

(c) An Options Participant that is subject to this Section 13 and that fails to conduct or participate in the tests, fails to file the required reports, or fails to maintain the required documentation, may be subject to a summary suspension or other action taken pursuant to Chapter IX of these Rules and/or a disciplinary action pursuant to the Rule 9000 Series of the Rules of the Exchange (Disciplining of Members).

#### **Sec. 14 Limit on Outstanding Uncovered Short Positions**

(a) Whenever it is determined from the reports of uncovered short positions submitted pursuant to Section 2 of Chapter VIII of these Rules (Reports of Uncovered Short Positions), viewed in light of current market conditions in options and in underlying securities, that there are outstanding an excessive number of uncovered short positions in options contracts of a given class traded on NOM or that an excessively high percentage of outstanding short positions in options contracts of a given class traded on NOM are uncovered, NASDAQ Regulation may determine to prohibit Options Participants from any further opening writing transactions on any exchange in options contracts of that class unless the resulting short position will be covered, and NASDAQ Regulation may prohibit the uncovering of any existing covered short positions in one or more series of options of that class, as it deems appropriate in the interest of maintaining a fair and orderly market in options contracts or in underlying securities.

(b) NASDAQ Regulation may exempt transactions of Options Market Makers from restrictions imposed under this Rule. Such restrictions shall be rescinded upon a determination that they are no longer appropriate.

#### **Sec. 15 Significant Business Transactions of Options Clearing Participants**

Significant Business Transactions of Options Clearing Participants shall be governed by this Section 15 and not by NASDAQ Rule 1017. All other Significant Business Transactions of Options Participants shall be subject to NASDAQ Rule 1017.

(a) Except as provided in paragraph (c) below, a Participant that clears Options Market Maker trades is required to notify NASDAQ Regulation in writing fifteen (15) days prior to any of the following proposed significant business transactions ("SBT"):

i. the combination, merger or consolidation between the Participant and another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products;

ii. the transfer from another person, market maker, broker-dealer, or customer of securities or futures accounts that are significant in size or number to the business of the Participant;

iii. the assumption or guarantee by the Participant of liabilities of another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products, in connection with a direct or indirect acquisition of all or substantially all of the person's assets; or

iv. termination of the Participant's clearing business or any material part thereof.

(b) Notification of any of the following SBTs shall be made in writing to NASDAQ Regulation, not later than five (5) business days from the date on which the SBT becomes effective:

i. the sale by the Clearing Participant of a significant part of its assets to another person;

ii. a change in the identity of any general partner or a change in the beneficial ownership of ten percent (10%) or more of any class of the outstanding stock of any corporate general partner;

iii. a change in the beneficial ownership of twenty percent (20%) or more of any class of the outstanding stock of the Participant or the issuance of any capital stock of the Participant; or

iv. the acquisition by the Clearing Participant of assets of another person that would constitute a "business" that is "significant," as those terms are defined in Section 11-01 of Regulation S-X under the Exchange Act.

(c) A Clearing Participant is required to notify NASDAQ Regulation in writing thirty (30) days prior to a proposed SBT included in paragraph (a) of this Rule, and such SBT shall be subject to the prior approval of NASDAQ Regulation, if the Participant's Market Maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

i. fifteen percent (15%) of cleared NOM Market Maker contract volume for the most recent three (3) months;

ii. an average of fifteen percent (15%) of the number of NOM Market Makers as of each month and for the most recent three (3) months; or

iii. twenty-five percent (25%) of NOM Market Maker gross deductions (haircuts) defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant in relation to the aggregate of such haircuts carried by all other Clearing Participants for any month end within the most recent three (3) months.

(d) An SBT that comes within paragraph (c) of this Section 15 may be disapproved or conditioned within the thirty (30) day period if NASDAQ Regulation determines that such SBT has the potential to threaten the financial or operational integrity of Market Maker transactions. In making this determination, NASDAQ Regulation may consider, among other relevant matters, the following:

i. The effect of the proposed SBT on the capital size and structure of the resulting Clearing Participant(s), the potential for financial failure and the consequences of any such failure on the NOM market as a whole, and the potential for increased or decreased operational efficiencies arising from the proposed transaction.

ii. The effect of the proposed SBT upon overall concentration of Market Makers, including a comparison of the following measures before and after the proposed transaction:

1) proportion of NOM Market Maker contract volume cleared;

2) proportion of NOM Market Makers cleared; and

3) proportion of Market Maker gross deductions (haircuts) as defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Participant(s) in relation to the aggregate of such deductions carried by other Participants that clear market maker transactions.

iii. The regulatory history of the affected Participants, specifically as it may indicate a tendency to financial or operational weakness.

(e) Transactions that come within paragraph (c) of this Section 15 shall be reviewed according to the following procedures:

i. A Participant must provide promptly, in writing, all information reasonably requested by NASDAQ Regulation. Any information disclosed by Participants pursuant to the requirements of this Section 15 shall be kept confidential by NASDAQ Regulation until such information is otherwise publicly disclosed and shall be used only for purposes of reviewing the proposal.

ii. If NASDAQ Regulation determines, prior to the expiration of the thirty (30) day period, that a proposed SBT may be approved without conditions, NASDAQ Regulation shall promptly so advise the Participant.

iii. All decisions to disapprove or condition a proposed SBT or to impose extraordinary requirements shall be in writing, shall include a statement setting forth the grounds for the decision, and the Participant shall be promptly notified of any such decisions by NASDAQ Regulation.

iv. Notwithstanding any other provisions of the NOM Rules, the Participant may appeal a decision to disapprove or condition a proposed SBT directly to the Board by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. Appeal to the Board shall be the exclusive method of reviewing such a decision.

v. An appeal to the Board of a decision to disapprove or condition a proposed SBT shall not operate as a stay of that decision during the pendency of the appeal.

vi. NASDAQ Regulation shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Exchange Act of all final decisions to disapprove or condition a proposed SBT.

(f) NASDAQ Regulation may impose additional financial and/or operational requirements on a Participant that clears Market Maker trades at any time when it determines that the Participant's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Market Maker transactions.

(g) The provisions of this Section 15 do not preclude summary action under Chapter X, Summary Suspension, of these Rules, or other NASDAQ Regulation action pursuant to the NOM Rules.

(h) NASDAQ Regulation, upon approval by the Chief Regulatory Officer of NASDAQ, may exempt a Participant from the requirements of this Section 15, either generally or in respect of specific types of transactions, based on the limited proportion of Market Maker trades on NOM that are cleared by the Participant or on the limited importance that the clearing of Market Maker trades bears to the total business of the Participant.

## **CHAPTER IV. SECURITIES TRADED ON NOM**

### **Sec. 1 Designation of Securities**

Securities traded on NOM are options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month, exercise price and type (put or call).

### **Sec. 2 Rights and Obligations of Holders and Writers**

The rights and obligations of holders and writers are set forth in the Rules of the Clearing Corporation.

### **Sec. 3 Criteria for Underlying Securities**

(a) Underlying securities with respect to which put or call options contracts are approved for listing and trading on NOM must meet the following criteria:

i. The security must be registered with the SEC and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act; and

ii. the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.

(b) In addition, NASDAQ Regulation shall from time to time establish standards to be considered in evaluating potential underlying securities for NOM options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by NASDAQ Regulation does not necessarily mean that it will be selected as an underlying security. NASDAQ Regulation may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

i. There are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act.

ii. There are a minimum of 2,000 holders of the underlying security.

iii. The issuer is in compliance with any applicable requirements of the Exchange Act or Rules thereunder.

iv. Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.

v. Either:

1) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or

2) If the underlying security is not a "covered security," the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

(c) Securities of Restructured Companies

i. Definitions. The following definitions shall apply to the provisions of this paragraph (c):

1) "Restructuring Transaction" refers to a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

2) "Restructure Security" refers to an equity security that a company issues, or anticipates issuing, as the result of a Restructuring Transaction of the company.

3) "Original Equity Security" refers to a company's equity security that is issued and outstanding prior to the effective date of a Restructuring Transaction of the company.

4) "Relevant Percentage" refers to either: (i) twenty-five percent (25%), when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; or (ii) thirty-three and one-third percent (33-1/3%), when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

ii. "Share" and "Number of Shareholder" Standards. In determining whether a Restructure Security satisfies the share standard set forth in this Section 3(b)(i) (the "Share Standard") or the number of holders standard set forth in this Section 3(b)(ii) (the "Number of Shareholders Standard"), NASDAQ Regulation may rely upon the facts and circumstances that it expects to exist on the option's intended listing date, rather than on the date on which NASDAQ Regulation selects for options trading the underlying Restructure Security.

1) NASDAQ Regulation may assume that: (i) both the "Share" and "Number of Shareholders" Standards are satisfied if, on the option's intended listing date, NASDAQ Regulation expects no fewer than forty (40) million shares of the Restructure Security to be issued and outstanding; and (ii) either such Standard is satisfied if, on the option's

intended listing day, NASDAQ Regulation expects the Restructure Security to be listed on an exchange or automatic quotation system that has, and is subject to, an initial listing requirement that is no less stringent than the Standard in question.

2) NASDAQ Regulation may not rely on any such assumption, however, if a reasonable NASDAQ Regulation investigation or that of another exchange demonstrates that either the Share Standard or Number of Shareholders Standard will not in fact be satisfied on an option's intended listing date.

3) In addition, in the case of a Restructuring Transaction in which the shares of a Restructure Security are issued or distributed to the holders of shares of an Original Equity Security, NASDAQ Regulation may determine that either the Share Standard or the Number of Shareholders Standard is satisfied based upon NASDAQ Regulation's knowledge of the outstanding shares or number of shareholders of the Original Equity Security.

iii. "Trading Volume" Standard. In determining whether a Restructure Security that is issued or distributed to the holders of shares of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies the trading volume standard set forth in Section 3(b)(iv) (the "Trading Volume Standard"), NASDAQ Regulation may consider the trading volume history of the Original Equity Security prior to the "ex-date" of the Restructuring Transaction if the Restructure Security satisfies the "Substantiality Test" set forth in subparagraph (v) below.

iv. "Market Price" Standard. In determining whether a Restructure Security satisfies the market price history standard set forth in Section 3(b)(v) (the "Market Price Standard"), NASDAQ Regulation may consider the market price history of the Original Equity Security prior to the "ex-date" of the Restructuring Transaction if:

1) the Restructure Security satisfies the "Substantiality Test" set forth in subparagraph (v) below; and

2) in the case of the application of the Market Price Standard to a Restructure Security that is distributed pursuant to a public offering or a rights distribution: (i) the Restructure Security trades "regular way" on an exchange or automatic quotation system for at least the five trading days immediately preceding the date of selection; and (ii) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the date of selection, and the opening of trading on the date of selection, the market price of the Restructure Security was at least \$7.50, or, if the Restructure Security is a "covered security," as defined in Section 3(b)(v)(1), the market price of the Restructure Security was at least \$3.00.

v. The "Substantiality Test." A Restructure Security satisfies the "Substantiality Test" if:

1) the Restructure Security has an aggregate market value of at least \$500 million; or

2) at least one of the following conditions is met:

(a) the aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage of the aggregate market value of the Original Equity Security;

(b) the aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both \$50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(c) the revenues attributed to the business represented by the Restructure Security equals or exceeds both \$50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

vi. A Restructure Security's aggregate market value may be determined from "when issued" prices, if available.

vii. In calculating comparative aggregate market values for the purpose of assessing whether a Restructure Security qualifies to underlie an option, NASDAQ Regulation shall use the Restructure Security's closing price on its primary market on the last business day prior to the selection date or the Restructure Security's opening price on its primary market on the selection date and shall use the corresponding closing or opening price of the related Original Equity Security.

viii. In calculating comparative asset values and revenues, NASDAQ Regulation shall use either: (a) the issuer's latest annual financial statements or (b) the issuer's most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

ix. Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, NASDAQ Regulation may not rely upon the trading volume or market price history of an Original Equity Security as Paragraph (c) of this Section 3 permits for any trading day unless it relies upon both of those measures for that trading day.

x. Once NASDAQ Regulation commences to rely upon a Restructure Security's trading volume and market price history for any trading day, NASDAQ Regulation may not rely upon the trading volume and market price history of the security's related Original Equity Security for any trading day thereafter.

xi. "When Issued" Trading Prohibited. NASDAQ Regulation shall not list for trading options contracts that overlie a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of shares.

(d) In considering underlying securities, NASDAQ Regulation shall ordinarily rely upon information made publicly available by the issuer and/or the markets in which the security is traded.

(e) The word "security" shall be broadly interpreted to mean any equity security, as defined in Rule 3a11-1 under the Exchange Act, which is appropriate for options trading, and the word "shares" shall mean the unit of trading of such security.

(f) Securities deemed appropriate for options trading shall include nonconvertible preferred stock issues and American Depositary Receipts ("ADRs") if they meet the criteria and standards set forth in this Section 3 and if, in the case of ADRs:

i. NASDAQ Regulation has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

ii. the combined trading volume of the ADR and other related ADRs and securities (as defined below) occurring in the U.S. ADR market or in markets with which the Exchange has in place an effective surveillance sharing agreement represents (on a share equivalent basis) at least fifty percent (50%) of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock (together "other related ADRs and securities") over the three month period preceding the date of selection of the ADR for options trading; or

iii.

1) the combined trading volume of the ADR and other related ADRs and securities occurring in the U.S. ADR market and in markets where NASDAQ Regulation has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least twenty percent (20%) of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading,

2) the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares, and

3) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of the trading days for the three (3) months preceding the date of selection of the ADR for options trading ("Daily Trading Volume Standard"); or

iv. the SEC otherwise authorizes the listing.

(g) Securities deemed appropriate for options trading shall include shares issued by registered closed-end management investment companies that invest in the securities of issuers based in one or more foreign countries ("International Funds") if they meet the criteria and standards set forth in this Section 3 and either:

i. NASDAQ Regulation has a market information sharing agreement with the primary home exchange for each of the securities held by the fund, or

ii. the International Fund is classified as a diversified fund as that term is defined by Section 5(b) of the Investment Company Act of 1940, as amended, and the securities held by the fund are issued by issuers based in five (5) or more countries.

(h) A "market information sharing agreement" for purposes of this Section is an agreement that would permit NASDAQ Regulation to obtain trading information relating to the securities held by the fund including the identity of the Participant of the foreign exchange executing a trade. International Fund shares not meeting the criteria of paragraph (i) shall be deemed appropriate for options trading if the SEC specifically authorizes the listing thereof.

(i) Securities deemed appropriate for options trading shall include shares or other securities ("Fund Shares") that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as "national market" securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) ("Funds"); provided that all of the following conditions are met:

i. any non-U.S. component stocks of the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

ii. Stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;

iii. stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; and

iv. the Fund Shares either (1) meet the criteria and standards set forth in paragraphs (a) and (b) of this Section 3 above; or (2) the Fund Shares are available for creation or redemption each business day from or through the Fund in cash or in kind at a price related to net asset value, and the Fund is obligated to issue Fund Shares in a specified

aggregate number even if some or all of the securities required to be deposited have not been received by the Fund, subject to the condition that the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund, all as described in the Fund's prospectus.

(j) Securities deemed appropriate for options trading shall include shares or other securities ("Trust Issued Receipts") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent ownership of the specific deposited securities held by a trust, provided:

i. the Trust Issued Receipts (1) meet the criteria and standards for underlying securities set forth in paragraph (b) to this Rule; or (2) must be available for issuance or cancellation each business day from the Trust in exchange for the underlying deposited securities; and

ii. not more than 20% of the weight of the Trust Issued Receipt is represented by ADRs on securities for which the primary market is not subject to a comprehensive surveillance agreement.

(k) Notwithstanding the requirements set forth in Paragraphs (b)(i), (b)(ii), (b)(iv), and (b)(v) above, options may be listed for trading on NOM if:

(i) the underlying security meets the guidelines for continued listing in Chapter 4, Section 4; and

(ii) options on such underlying security are listed and traded on at least one other national securities exchange.

Nasdaq shall employ the same procedures to qualify underlying securities pursuant to this subsection (k) as it employs in qualifying underlying securities pursuant to other subsections of this Section 3.

#### **Sec. 4 Withdrawal of Approval of Underlying Securities**

(a) If put or call options contracts with respect to an underlying security are approved for listing and trading on NOM, such approval shall continue in effect until such approval is affirmatively withdrawn by NASDAQ Regulation. Whenever NASDAQ Regulation determines that an underlying security previously approved for NOM Transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, NASDAQ will not open for trading any additional series of options of the class covering that underlying security and shall prohibit any opening purchase transactions in series of options of that class previously opened to the extent it deems such action necessary or appropriate.

(b) An underlying security will not be deemed to meet NASDAQ Regulation's requirements for continued approval whenever any of the following occur:

i. There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act.

ii. There are fewer than 1,600 holders of the underlying security.

iii. The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months.

iv. The market price per share of the underlying security closed below \$3 on the previous trading day as measured by the closing price reported by the primary market in which the underlying security is traded.

v. The underlying security ceases to be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act.

vi. If an underlying security is approved for options listing and trading under the provisions of Section 3 of this Chapter IV (Criteria for Underlying Securities), the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including "when-issued" trading, may be taken into account in determining whether the trading volume and market price requirements of (iii) and (iv) of this paragraph (b) are satisfied.

(c) In connection with paragraph (b)(iv) of this Section 4, NASDAQ shall not open for trading any additional series of options contracts of the class covering an underlying security at any time (including on a next-day, expiration or intra-day basis) when the market price per share of such underlying security closed less than \$3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above \$3 on the last trading day preceding the day series are added, NASDAQ shall not open for trading any additional series of options contracts on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least \$3 at the time NASDAQ determines to add the series. Notwithstanding the above, NASDAQ may add a series if the additional series is traded on at least one other registered national securities exchange and, at the time the additional series was listed by such other registered national securities exchange, it met the \$3 market price requirement.

(d) In considering whether any of the events specified in paragraph (b) of this Section 4 have occurred with respect to an underlying security, NASDAQ Regulation shall

ordinarily rely on information made publicly available by the issuer and/or the markets in which such security is traded.

(e) If prior to the delisting of a class of options contracts covering an underlying security that has been found not to meet NASDAQ Regulation's requirements for continued approval, NASDAQ Regulation determines that the underlying security again meets NASDAQ Regulation's requirements, NASDAQ may open for trading additional series of options of that class and may lift any restriction on opening purchase transactions imposed by this Section 4.

(f) Whenever NASDAQ Regulation announces that approval of an underlying security has been withdrawn for any reason or that NASDAQ Regulation has been informed that the issuer of an underlying security has ceased to be in compliance with SEC reporting requirements, each Participant shall, prior to effecting any transaction in options contracts with respect to such underlying security for a Customer, inform such Customer of such fact and of the fact that NASDAQ Regulation may prohibit further transactions in such options contracts to the extent it shall deem such action necessary and appropriate.

(g) If an ADR was initially deemed appropriate for options trading on the grounds that fifty percent (50%) or more of the worldwide trading volume (on a share-equivalent basis) in the ADR and other related ADRs and securities takes place in U.S. markets or in markets with which NASDAQ Regulation has in place an effective surveillance sharing agreement, or if an ADR was initially deemed appropriate for options trading based on the daily trading volume standard in Section 3 of this Chapter IV (Criteria for Underlying Securities), NASDAQ may not open for trading additional series of options on the ADR unless:

i. The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which NASDAQ Regulation has in place effective surveillance sharing agreements for any consecutive three (3) month period is either: (1) at least thirty percent (30%) without regard to the average daily trading volume in the ADR, or (2) at least fifteen percent (15%) when the average U.S. daily trading volume in the ADR for the previous three (3) months is at least 70,000 shares; or

ii. NASDAQ Regulation then has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

iii. the SEC has otherwise authorized the listing thereof.

(h) Fund Shares approved for options trading pursuant to Section 3 of this Chapter IV will not be deemed to meet the requirements for continued approval, and NASDAQ shall not open for trading any additional series of option contracts of the class covering such Fund Shares if the security is delisted from trading as provided in subparagraph (b)(v) of this Section. In addition, NASDAQ Regulation shall consider the suspension of opening

transactions in any series of options of the class covering Fund Shares in any of the following circumstances:

i. In the case of options covering Fund Shares approved pursuant to Section 3(i)(iv)(1), in accordance with the terms of subparagraphs (b)(i), (ii),(iii) and (iv) of this Section 4;

ii. In the case of options covering Fund Shares approved pursuant to Section 3(i)(iv)(2) of this Chapter IV, following the initial twelve-month period beginning upon the commencement of trading in the Fund Shares on a national securities exchange or as NMS securities through the facilities of a national securities association and annually thereafter there were fewer than 50 record and/or beneficial holders of such Fund Shares for 30 consecutive days;

iii. the value of the index or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or

iv. such other event occurs or condition exists that in the opinion of NASDAQ Regulation makes further dealing in such options on NOM inadvisable.

(i) Securities initially approved for options trading pursuant to paragraph (j) of Section 3 of this Chapter IV (such securities are defined and referred to in that paragraph as "Trust Issued Receipts") shall not be deemed to meet NASDAQ Regulation's requirements for continued approval, and NASDAQ shall not open for trading any additional series of option contracts of the class covering such Trust Issued Receipts, whenever the Trust Issued Receipts are delisted and trading in the Receipts is suspended on a national securities exchange, or the Trust Issued Receipts are no longer traded as national market securities through the facilities of a national securities association. In addition, NASDAQ Regulation shall consider the suspension of opening transactions in any series of options of the class covering Trust Issued Receipts in any of the following circumstances:

i. in accordance with the terms of paragraph (b) of this Section 4 in the case of options covering Trust Issued Receipts when such options were approved pursuant to subparagraph (j)(i)(1) under Section 3 of this Chapter IV;

ii .upon annual review, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 consecutive days;

iii. the Trust has fewer than 50,000 receipts issued and outstanding;

iv. the market value of all receipts issued and outstanding is less than \$1,000,000; or

v. such other event shall occur or condition exist that in the opinion of NASDAQ Regulation makes further dealing in such options on NOM inadvisable.

(j) For Trust Issued Receipts approved for options trading pursuant to paragraph (j) of Section 3 of this Chapter IV that are also Holding Company Depositary Receipts (“HOLDRs”), NASDAQ will not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

### **Sec. 5 Minimum Participation Requirement for Opening Trading of Option Series**

(a) After a particular class of options has been approved for listing on NOM by NASDAQ Regulation, NASDAQ will open trading in series of options in that class only if there is at least one Market Maker registered for trading that particular series.

(b) If a particular class of options has been approved for listing on NOM and there is not at least one series of options in that class open for trading, the listing shall be placed in a non-regulatory suspension until such time as a series of options in that class may be opened. In such circumstances, NOM will not execute orders on its book, and will have no rights and privileges under the Linkage Plan to accept inbound orders from away markets. NOM will continue to accept and route member orders that are designated for routing and execution at the best price in away markets.

(c) If after NASDAQ has opened trading in a series of options, the sole Market Maker withdraws its registration, NASDAQ will place that options series in a non-regulatory execution suspension until such time as a NOM member registers to make markets in that series. In such circumstances, NOM will not execute orders on its book, and will have no rights and privileges under the Linkage Plan to accept inbound orders from away markets. NOM will continue to accept and route member orders that are designated for routing and execution at the best price in away markets.

### **Sec. 6 Series of Options Contracts Open for Trading**

(a) After a particular class of options has been approved for listing and trading on NOM by NASDAQ Regulation, NASDAQ from time to time may open for trading series of options in that class. Only options contracts in series of options currently open for trading may be purchased or written on NOM. Prior to the opening of trading in a given series, NASDAQ will fix the expiration month, year and exercise price of that series.

(b) At the commencement of trading on NOM of a particular class of options, NOM will open a minimum of one (1) series of options in that class. The exercise price of the series will be fixed at a price per share, relative to the underlying stock price in the primary market at about the time that class of options is first opened for trading on NOM.

(c) Additional series of options of the same class may be opened for trading on NOM when NASDAQ deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike

prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, NASDAQ, in its discretion, may add a new series of options on an individual stock until five (5) business days prior to expiration.

(d) The interval between strike prices of series of options on individual stocks will be:

i. \$2.50 or greater where the strike price is \$25.00 or less;

ii. \$5.00 or greater where the strike price is greater than \$25.00; and

iii. \$10.00 or greater where the strike price is greater than \$200.00.

iv. The interval between strike prices of series of options on Fund Shares approved for options trading pursuant to Section 3(i) of this Chapter IV shall be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on NOM, or at such intervals as may have been established on another options exchange prior to the initiation of trading on NOM.

(e) NASDAQ will open at least one expiration month for each class of options open for trading on NOM.

(f) The interval of strike prices may be \$2.50 in any multiply-traded option class to the extent permitted on NOM by the Securities and Exchange Commission or once another exchange trading that option lists strike prices of \$2.50 on such options class.

### **Supplementary Material to Section 6**

.01 The interval between strike prices of series of options on individual stocks may be \$2.50 or greater where the strike price is \$25 or less, provided however, that NOM may not list \$2.50 intervals below \$20 (e.g. \$12.50, \$17.50) for any class included within the \$1 Strike Price Pilot Program, as detailed below in Supplementary Material .02, if the addition of \$2.50 intervals would cause the class to have strike price intervals that are \$0.50 apart. For series of options on Exchange-Traded Fund Shares that satisfy the criteria set forth in Chapter IV, *Securities Traded On NOM, Section 3, Criteria for Underlying Securities*, Paragraph (i) of these Rules, the interval of strike prices may be \$1 or greater where the strike price is \$200 or less or \$5 or greater where the strike price is over \$200. Exceptions to the strike price intervals above are set forth in Supplementary Materials .02 and .03 below.

.02 The interval between strike prices of series of options on individual stocks may be:

a. \$1.00 or greater ("1 Strike Prices") provided the strike price is \$20 or less, but not less than \$3. The listing of \$1 strike prices shall be limited to option classes overlying no more than five (5) individual stocks (the "1 Strike Price Pilot Program") as specifically designated by NOM. NOM may list 1 Strike Prices on any other option classes if those classes are specifically designated by other national securities exchanges that employ a similar 1 Strike Price Pilot Program under their respective rules.

b. To be eligible for inclusion into the 1 Strike Price Pilot Program, an underlying security must close below \$20 in the primary market on the previous trading day. After a security is added to the 1 Strike Price Pilot Program, NOM may list 1 Strike Prices from \$3 to \$20 that are no more than \$5 from the closing price of the underlying on the preceding day. For example, if the underlying security closes at \$13, NOM may list strike prices from \$8 to \$18. NOM may not list series with 1 intervals within \$0.50 of an existing \$2.50 strike price (e.g. \$12.50, \$17.50) in the same series. Additionally, for an option class selected for the 1 Strike Price Pilot Program, NOM may not list 1 Strike Prices on any series having greater than nine (9) months until expiration.

c. A security shall remain in the 1 Strike Price Pilot Program until otherwise designated by NOM. The 1 Strike Price Pilot Program shall expire on June 5, 2008.

**.03** (a) The options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25 but less than \$50. The 200 options classes are selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges and approved by the Commission. The strike price interval may be \$2.50 in any multiply traded option once another exchange trading that option selects such option, as part of this program.

(b) In addition, on any option class that has been selected as part of the \$2.50 Strike Price Program pursuant to paragraph (a) above, the Exchange may list \$2.50 strike prices between \$50 and \$75, provided the \$2.50 strike prices between \$50 and \$75 are no more than \$10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an option class has been selected as part of \$2.50 Strike Price Program, and the underlying stock closes at \$48.50 in its primary market, the Exchange may list the \$52.50 strike price and the \$57.50 strike price on the next business day. If an underlying security closes at \$54, the Exchange may list the \$52.50 strike price, the \$57.50 strike price, and the \$62.50 strike price on the next business day.

(c) An option class shall remain in the \$2.50 Strike Price Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.

### **Sec. 7 Adjustments**

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. NASDAQ will announce adjustments, and such changes will be

effective for all subsequent transactions in that series at the time specified in the announcement.

### **Sec. 8 Long-Term Options Contracts**

(a) Notwithstanding conflicting language in Section 5 of this Chapter IV (Series of Options Contracts Open for Trading), NASDAQ may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to six (6) additional expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.

(b) After a new long-term options contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

## **Chapter V. Regulation of Trading on NOM**

### **Sec. 1 Access to and Conduct on the NOM Market**

(a) Access to NOM. Unless otherwise provided in the Rules, no one but a Participant or a person associated with a Participant shall effect any NOM Transactions.

(b) NOM Conduct. Participants and persons employed by or associated with any Participant, while using the facilities of NOM, shall not engage in conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; or (iii) inconsistent with the ordinary and efficient conduct of business. Activities that shall violate the provisions of this paragraph (b) include, but are not limited to, the following:

- i. failure of a Market Maker to provide quotations in accordance with Chapter VII, Section 6 of these Rules;
  - ii. failure of a Market Maker to bid or offer within the ranges specified by Chapter VII, Section 5 of these Rules;
  - iii. failure of a Participant to supervise a person employed by or associated with such Participant adequately to ensure that person's compliance with this paragraph (b).
  - iv. failure to maintain adequate procedures and controls that permit the Options Participant to effectively monitor and supervise the entry of orders by users to prevent the prohibited practices set forth in this paragraph (b) and Chapter III, Section 2 of these Rules;
  - v. failure to abide by a determination of NASDAQ Regulation;
  - vi. effecting transactions that are manipulative as provided in Section 17 and 18(g) of this Chapter V and Rule 2110 of the Exchange
  - vii. refusal to provide information requested by NASDAQ Regulation; and
  - viii. failure to abide by the provisions of the sections of this Chapter V related to limitations on orders.
- (c) Subject to the Rules, NOM will provide access to the Trading System to Options Participants in good standing that wish to conduct business on NOM.
- (d) Pursuant to the Rules and the arrangements referred to in this Chapter V, NASDAQ Regulation may:
- i. suspend an Options Participant's access to the Trading System following a warning which may be made in writing or verbally (and subsequently confirmed in writing); or

ii. terminate an Options Participant's access to the Trading System by notice in writing.

### **Sec. 2 MarketWatch**

Personnel from MarketWatch, a unit of NASDAQ Regulation, shall monitor and surveil options trading on NOM in order to ensure the maintenance of a fair and orderly market.

### **Sec. 3 Trading Halts**

(a) Halts. NASDAQ Regulation may halt trading in any option contract in the interests of a fair and orderly market. The following are among the factors that shall be considered in determining whether the trading in an option contract should be halted:

i. trading in the underlying security has been halted or suspended in the primary market.

ii. the opening of such underlying security has been delayed because of unusual circumstances.

iii. occurrence of an act of God or other event outside NOM's control;

iv. a Trading System technical failure or failures including, but not limited to, the failure of a part of the central processing system, a number of Options Participant trading applications, or the electrical power supply to the system itself or any related system; or;

v. other unusual conditions or circumstances are present.

(b) In the event NASDAQ Regulation determines to halt trading, all trading in the effected class or classes of options shall be halted. NOM shall disseminate through its trading facilities and over OPRA a symbol with respect to such class or classes of options indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.

(c) No Options Participant or person associated with a Participant shall effect a trade on NOM in any options class in which trading has been halted under the provisions of this Section 3 during the time in which the halt remains in effect.

### **Sec. 4 Resumption of Trading After a Halt**

Trading in an option that has been the subject of a halt under Section 3 of this Chapter V shall be resumed upon the determination by NASDAQ Regulation, that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

### **Sec. 5 Unusual Market Conditions**

(a) NOM staff may determine that the level of trading activities or the existence of unusual market conditions is such that NOM is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately

reflects the current state of the market on NOM. Upon making such a determination, NASDAQ Regulation shall designate the market in such option to be "fast." When a market for an option is declared fast, NASDAQ Regulation will provide notice that NOM quotations are not firm by appending an appropriate indicator to the NOM quotations.

(b) If a market is declared fast, NASDAQ Regulation shall have the power to do one or more of the following with respect to the class or classes involved:

i. Suspend the minimum size requirement as permitted under Chapter VII, Section 6 (Market Maker Quotations) of these Rules.

ii. Take such other actions as are deemed in the interest of maintaining a fair and orderly market.

(c) NASDAQ Regulation will monitor the activity or conditions that caused a fast market to be declared, and shall review the condition of such market at least every thirty (30) minutes. Regular trading procedures shall be resumed when NOM determines that the conditions supporting a fast market declaration no longer exist. NASDAQ Regulation will provide notice that its quotations are once again firm by removing the indicator from the NOM quotations.

(d) If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures contained in this Section 6, then NASDAQ Regulation, shall instruct NASDAQ operations to halt trading in the class or classes so affected.

(e) NASDAQ Regulation shall instruct NASDAQ operations to halt trading in all options whenever a marketwide trading halt is initiated on the New York Stock Exchange (commonly known as a "circuit breaker") in response to extraordinary market conditions.

**Sec. 6 Obvious Errors**

(a) NASDAQ shall either nullify a transaction or adjust the execution price of a transaction that meets the standards provided in this Section.

(b) *Definition of Obvious Error.* For purposes of this Section only, an Obvious Error will be deemed to have occurred when:

(i) the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

<u>Theoretical Price</u>	<u>Minimum Amount</u>
<u>Below \$2</u>	<u>.25</u>
<u>\$2 to \$5</u>	<u>.40</u>
<u>Above \$5 to \$10</u>	<u>.50</u>
<u>Above \$10 to \$20</u>	<u>.80</u>

Above \$20 1.00

(ii) the trade resulted in an execution price in a series that was, and for five seconds prior to the execution remained, quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution (in which case the trade shall be nullified). For purposes of this subparagraph, bids and offers of the parties to the subject trade that are in any of the series in the same options class shall not be considered.

(c) Definition of Theoretical Price. For purposes of this Section only, the Theoretical Price of an option series is,

(i) If the series is traded on at least one other options exchange, the mid-point of the National Best Bid and Offer ("NBBO"), just prior to the transaction; or

(ii) If there are no quotes for comparison purposes, as determined by MarketWatch as defined in Chapter I.

(d) Obvious Error Procedure. If a party believes that it participated in a transaction that was the result of an Obvious Error, it must notify MarketWatch via written or electronic complaint within 15 minutes of the execution. Absent unusual circumstances, NASDAQ will not grant relief under this Section unless notification is made within the prescribed periods of time. A designated employee in NASDAQ Regulation that is trained in the application of this rule ("NASDAQ Official") shall administer the application of this Section.

(e). Adjust or Bust. A NASDAQ Official will determine whether there was an Obvious Error as defined above. If it is determined that an Obvious Error has occurred, MarketWatch shall take one of the actions listed below. Upon taking final action, MarketWatch shall promptly notify both parties to the trade electronically or via telephone.

(i). Where each party to the transaction is an Options Participant, the execution price of the transaction will be adjusted by the NASDAQ Official to the prices provided in subparagraphs (A) and (B) below unless both parties agree to adjust the transaction to a different price or agree to bust the trade within ten (10) minutes of being notified by MarketWatch of the Obvious Error.

(A) Erroneous buy transactions will be adjusted to their Theoretical Price plus \$.15 if the Theoretical Price is under \$3, or plus \$.30 if the Theoretical Price is at or above \$3.

(B) Erroneous sell transactions will be adjusted to their Theoretical Price minus \$.15 if the Theoretical Price is under \$3, or minus \$.30 if the Theoretical Price is at or above \$3.

- (ii) Where at least one party to the Obvious Error is not an Options Participant, the trade will be nullified unless both parties agree to an adjustment price for the transaction within 30 minutes of being notified by MarketWatch of the Obvious Error.
- (iii) Trades meeting the Obvious Errors definition in (b)(ii) above shall be nullified.
- (iv) *Mutual Agreement.* The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree.
- (f) Review by the Market Operations Review Committee ("MORC")
- (i) A party to a transaction affected by a decision made under this section may appeal that decision to the MORC. An appeal must be made in writing, and must be received by NASDAQ within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. The MORC may review any decision appealed, including whether a complaint was timely, whether an Obvious Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price.
- (ii) A MORC panel will be comprised minimally of representatives of one (1) member engaged in Market Making and two (2) industry representatives not engaged in Market Making. At no time should a review panel have more than 50% members engaged in Market Making.
- (iii) The MORC, pursuant to the standards set forth in this rule, shall affirm, modify, or reverse the determination.
- (iv) The decision of the MORC pursuant to an appeal, or a determination by a NASDAQ Official that is not appealed, shall be final and binding upon all parties and shall constitute final NASDAQ action on the matter in issue. Any determination by a NASDAQ Official or the MORC shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.
- (v) The party initiating the appeal shall be assessed a \$500.00 fee if the MORC upholds the decision of the NASDAQ Official. In addition, in instances where NASDAQ, on behalf of an Options Participant, requests a determination by another market center that a transaction is clearly erroneous, NASDAQ will pass any resulting charges through to the relevant Options Participant.

**Sec. 7 Audit Trail**

(a) Order Identification. When entering orders on NOM, each Options Participant shall submit order information in such form as may be prescribed by NASDAQ in order to allow NOM to properly prioritize and match orders and report resulting transactions to the Clearing Corporation.

(b) An Options Participant must ensure that each options order received from a Customer for execution on NOM is recorded and time-stamped immediately. The order record must be time-stamped again on execution and also at the time of any modification or cancellation of the order by the Customer. Order records relating to NOM must contain the following information at a minimum:

i. a unique order identification;

ii. the underlying security;

iii. opening/closing designation;

iv. the identity of the Clearing Participant;

v. Options Participant identification;

vi. Participant Capacity;

vii. identity of the individual/terminal completing the order ticket;

viii. customer identification;

ix. account identification;

x. buy/sell;

xi. contract volume;

xii. contract month;

xiii. exercise price;

xiv. put/call;

xv. price or price limit, price range or strategy price;

xvi. special instructions (e.g., GTC); and

xvii. and such other information as may be required by NOM.

(c) An Options Participant that employs an electronic system for order routing or order management which complies with NOM requirements will be deemed to be complying with the requirements of this Section if the required information is recorded in electronic form rather than in written form.

(d) In addition to any related requirement under applicable securities laws, information recorded pursuant to this Section must be retained by Options Participants for a period of no less than three (3) years after the date of the transaction.

### **Sec. 8 Failure to Pay Premium**

(a) When the Clearing Corporation shall reject a NOM Transaction because of the failure of the Clearing Participant acting on behalf of the purchaser to pay the aggregate premiums due thereon as required by the Rules of the Clearing Corporation, the Options Participant acting as or on behalf of the writer shall have the right either to cancel the transaction by giving notice thereof to the Clearing Participant or to enter into a closing writing transaction in respect of the same options contract that was the subject of the rejected NOM Transaction for the account of the defaulting Clearing Participant.

(b) Such action shall be taken as soon as possible, and in any event not later than 10:00 A.M. EST on the business day following the day the NOM Transaction was rejected by the Clearing Corporation.

### **Sec. 9 Limitation of Liability**

(a) Except as provided for in Rule 4626, NOM and its affiliates shall not be liable for any losses, damages, or other claims arising out of the NOM Trading System or its use. Any losses, damages, or other claims, related to a failure of the NOM Trading System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, message, or other data entered into, or created by, the NOM Trading System shall be absorbed by the member, or the member sponsoring the customer, that entered the order, message, or other data into the NOM Trading System.

## **Chapter VI. Trading System**

### **Sec. 1. Definitions**

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a) The term "System" shall mean the automated system for order execution and trade reporting owned and operated by The NASDAQ Options Market LLC. The NASDAQ Options Market 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 Options Price Reporting Authority, 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 without attribution to Participants' MPIDs Displayed Orders on both the bid and offer side of the market for price levels then within the NASDAQ Options Market using the minimum price variation applicable to that security.

(b) The term "System Securities" shall mean all options that are currently trading on NOM pursuant to Chapter IV above. All other options shall be "Non System Securities."

(c) The term "Participant" shall include Options Market Makers and Options Order Entry Firms that are registered to enter orders into the System.

(d) The term "Order" shall mean a single order 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

(e) 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) “Reserve Orders” are limit orders that have both a displayed size as well as an additional non-displayed amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the displayed portion of a Reserve Order is fully executed, the System will replenish the display portion from reserve up to the size of the original display 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.
- (2) “Limit Orders” are orders to buy or sell an option 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.
- (3) “Minimum Quantity Orders” are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close .will be rejected.
- (4) “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 contracts become available on the opposite side of the market or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the automatic cancellation of the displayed contracts portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert and process all such orders in the same priority in which such Discretionary Orders were entered. 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.
- (5) “Market Orders” are orders to buy or sell at the best price available at the time of execution.
- (6) “Price Improving Orders” are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price

Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders.

(f) The term "Order Size" shall mean the number of contracts up to 9,999 associated with the Order.

(g) 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) "Expire Time" or "EXPR" 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. EXPR Orders shall be available for entry from 9:00 a.m. until market close Eastern Time and for execution from 9:30 a.m. until market close.

(2) "Immediate Or Cancel" or "IOC" 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. IOC Orders shall be available for entry from 9:00 a.m. until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between 9:00 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.

(3) "DAY" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders shall be available for entry from 9:00 a.m. until market close and for potential execution from 9:30 a.m. until market close.

(4) "Good Til Cancelled" or "GTC" 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 the option expires, whichever comes first. GTC Orders shall be available for entry from 9:00 a.m. until market close and for potential execution from 9:30 a.m. until market close.

(h) The term "System Book Feed" shall mean a data feed for System securities.

## **Sec. 2 Days and Hours of Business**

(a) The System operates and shall be available to accept bids and offers and orders from 9:00 a.m. to market close on each business day, unless modified by NOM. Orders and bids and offers shall be open and available for execution as of 9:30 a.m. Eastern Time and shall close as of 4:00 p.m. Eastern Time except for option contracts on fund shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time.

(b) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on NOM shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying NOM options. Notwithstanding the foregoing, transactions may be effected in options contracts on Fund Shares, as defined in Chapter 4, Section 3(i), on NOM until 4:15 p.m.

(c) NOM shall not be open for business on any holiday observed by the NASDAQ Stock Market, LLC.

### **Sec. 3 Units of Trading**

The unit of trading in each series of options traded on NOM shall be the unit of trading established for that series by the Clearing Corporation pursuant to the Rules of the Clearing Corporation and the agreements of NASDAQ with the Clearing Corporation.

### **Sec. 4 Meaning of Premium Orders**

(a) *General.* Except as provided in paragraph (b), orders shall be expressed in terms of dollars per unit of the underlying security. For example, a bid of "5" shall represent a bid of \$500 for an options contract having a unit of trading consisting of 100 shares of an underlying security, or a bid of \$550 for an options contract having a unit of trading consisting of 110 shares of an underlying security.

(b) *Special Cases.* Orders for an options contract for which NOM has established an adjusted unit of trading in accordance with Section 4 of this Chapter VI shall be expressed in terms of dollars per 1/100 part of the total securities and/or other property constituting such adjusted unit of trading. For example, an offer of "3" shall represent an offer of \$300 for an options contract having a unit of trading consisting of 100 shares of an underlying security plus ten (10) rights.

### **Sec. 5 Minimum Increments**

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply: (1) if the options series is trading at less than \$3.00, five (5) cents; (2) if the options series is trading at \$3.00 or higher, ten (10) cents; and (3) if the options series is trading pursuant to the Penny Pilot program one (1)

cent if the options series is trading at less than \$3.00, five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQQs where the minimum quoting increment will be one cent for all series.

(b) The minimum trading increment for options contracts traded on NOM will be one (1) cent for all series.

## **Sec. 6 Acceptance of Orders**

All bids or offers made and accepted on NOM in accordance with the NOM Rules shall constitute binding contracts, subject to applicable requirements of the Rules of the Exchange and the Rules of the Clearing Corporation.

(a) 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.

(1) All System Orders shall indicate limit price and whether they are a call or put and buy or sell. Systems Orders can be designated as Immediate or Cancel (“IOC”), Good-till-Cancelled (“GTC”), Day (“DAY”), or Expire Time (“EXPR”).

(2) A System order may also be designated as a Reserve Order, a Limit Order, a Minimum Quantity Order, a Discretionary Order a Market Order, or a Price Improving Order.

(b) 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 Section 11 below. Routing shall be available in System securities as well as Non-System securities listed on other exchanges.

## **Sec. 7 Entry and Display of Orders**

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

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

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

(3) Orders can be entered into the System (or previously entered orders cancelled) from 9:00 a.m. until market close.

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

- (1) System Book Feed—displayed 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 Orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor.
- (3) Exceptions--The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:
  - (A) The Non-Displayed portion of Reserve 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 Section 10
  - (B) The contract size associated with Displayed Price Improving Orders to buy (sell) are displayed at the MPV below (above) the price of the Price Improving Order. Price Improving Orders will not be permitted to create a locked or crossed market or to cause a trade through violation.
  - (C) Trade-Through Compliance and Locked or Crossed Markets– An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions.

If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

## Sec. 8 NASDAQ Opening Cross

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

(1) "Imbalance" shall mean the number of contracts of Eligible Interest that may not be matched with other order contracts 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 in penny increments 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 contracts 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 contracts 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 is closest to the previous NASDAQ Official Closing Price;

(B) the number of contracts 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 Opening Cross would occur if the NASDAQ Opening 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) contracts 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 Opening Cross" shall mean the process for determining the price at which Eligible Interest shall be executed at the open of trading for the day 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 IOC, DAY, GTC, EXPR.

(b) Processing of NASDAQ Opening Cross. For the opening of trading of System securities, the Opening Cross shall occur at 9:30 and Market hours trading shall commence when the NASDAQ Opening Cross concludes.

(1) NASDAQ shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds beginning at 9:25 a.m.

(2) (A) The NASDAQ Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest 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 contracts 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 is closest to the previous NASDAQ Official Closing Price;

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

(4) All Eligible Interest 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 options that participate in the NASDAQ Opening Cross.

- (5) If the NASDAQ Opening Cross price established by subparagraphs (A) through (D) above is outside the benchmarks established by NASDAQ by a threshold amount, the NASDAQ Opening 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.

## **Sec. 9 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, DAY, GTC, or EXPR.
- (2) "Imbalance" shall mean the number of contracts of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, Close Eligible Interest or IO order contracts 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 9:00 a.m. and the beginning of the Closing Cross but they cannot be modified after 10 minutes prior to the Closing Cross except to increase the number of contracts. IO orders can be cancelled between 10 and 5 minutes prior to the Closing Cross 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 5 minutes prior to the Closing Cross for any reason. IO sell (buy) orders will only execute at or above (below) the System offer (bid) at the time of the Closing Cross.
- (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 9:00 a.m. and 10 minutes prior to the Closing Cross. LOC orders can be cancelled between 10 and 5 minutes prior to the Closing Cross 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 5 minutes prior to the Closing Cross for any reason. LOC Orders will execute only at the price determined by the NASDAQ Closing Cross.
- (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 9:00 a.m. and 10 minutes prior to the Closing Cross MOC orders can be cancelled between 10 and 5 minutes prior to the Closing Cross 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 5 minutes prior to the Closing Cross for any reason. MOC orders will execute only at the price determined by the NASDAQ Closing Cross.

(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 in penny increments 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 contracts 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 contracts 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 within the NASDAQ Market Center at the time of the order imbalance indicator dissemination.

(B) the number of contracts 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) contracts would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, NASDAQ shall disseminate an indicator for "market buy" or "market sell".
- (F) The Current Reference Price and Near Clearing Price shall be disseminated in the minimum price increment applicable to the option in question and never at a price that would expose undisplayed interest that is available for execution on the NOM book.

(b) Processing of NASDAQ Closing Cross. The NASDAQ Closing Cross will occur at 4:00:00 except for option contracts on fund shares or broad-based indexes for which the Closing Cross shall occur at 4:15 .

- (1) Order Imbalance Indicator. For ten minutes prior to the Closing Cross, 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 contracts 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 contracts 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, IO orders, and displayed Limit Orders priced more aggressively than the NASDAQ Closing Cross price based on price with time as the secondary priority;
- (C) Reserve Orders priced more aggressively than the NASDAQ Closing Cross price based on price with time as the secondary priority;
- (D) LOC orders, IO Orders displayed Limit Orders priced at the NASDAQ Closing Cross price with time as the secondary priority;
- (E) Reserve Orders at the NASDAQ Closing Cross price with time as the secondary priority; and
- (F) 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 options 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 20 minutes prior to the Closing Cross
- (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 20 minutes prior to the Closing Cross and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.
- (D) Adjusting the threshold values set forth in subparagraph (b)(2)(E) to no greater than 20 percent.

### **Sec. 10 Book Processing**

System orders shall be executed through the NASDAQ Book Process set forth below:

- (1) Execution Algorithm - Price/Time -- The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, trading interest will be executed in the following order:
  - (A) Displayed Orders;
  - (B) The Non-Displayed portion of Reserve Orders, in price/time priority among such interest;
  - (C) Discretionary portion of discretionary orders as set forth in section 1(e)(4) of this chapter, in price/time priority among such interest;
- (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 party that is removing liquidity previously posted to the Book.
- (4) NASDAQ-listed options that are the subject of a trading halt initiated pursuant to Chapter V, Section 3, shall open for trading at the time specified by NASDAQ pursuant to Chapter V, Section 4.

When the System opens, orders shall be added to the book in time priority and executed as described above in Subsection (1).

### **Sec. 11 Order Routing**

(a) For System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close, and shall route orders as follows. Participants can designate orders as either available for routing or not available for routing. Orders designated as not available for routing shall follow the book processing rules set forth in Section 10 above. Orders designated as available for routing, will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. If contracts remain un-executed after routing, they are posted on the book. 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.

(b) For Non-System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders based on the participant's instructions.

(c) Priority of Routed Orders. 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, 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.

(d) Options Participants whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on NOM.

(e) NOM shall route orders in options via NASDAQ Options Services LLC, a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. NASDAQ Options Services LLC serves as the Routing Facility of NOM. The sole function of the Routing Facility will be to route orders in options listed and open for trading on NOM to away markets pursuant to NOM rules solely on behalf of NOM. The Routing Facility is subject to regulation as a facility of

NASDAQ, including the requirement to file proposed rule changes under Section 19 of the Act

NASDAQ Options Services LLC also routes orders in options that are not listed and actually trading on NOM. When routing orders in options that are not listed and open for trading on NOM, NASDAQ Options Services is not a facility of NASDAQ and is not regulated as a facility of NASDAQ but as a broker-dealer regulated by its designated examining authority.

NOM shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Routing Facility), and any other entity.

The books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act. The books and records of the Routing Facility, as a facility of the Exchange, shall be subject at all times to inspection and copying by the Exchange and the Commission.

### **Sec. 12 Anonymity**

(a) 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 Order has been decremented by another Order submitted by that same member.

### **Sec. 13 Transaction Price Binding**

The price at which an order is executed shall be binding notwithstanding that an

erroneous report in respect thereto may have been rendered, or no report rendered. A report shall not be binding if an order was not actually executed but was reported to have been executed in error.

#### **Sec. 14 Clearing Participant Give Up**

An Options Participant must give up the name of the Clearing Participant through which the transaction will be cleared. If there is a subsequent change in identity of the Clearing Participant through whom a transaction will be cleared, the Options Participant must, as promptly as possible, report such change to NOM.

#### **Sec. 15 Submission for Clearance**

(a) All options transactions effected on NOM shall be submitted for clearance to the Clearing Corporation, and all such transactions shall be subject to the Rules of the Clearing Corporation. Every Clearing Participant shall be responsible for the clearance of NOM Transactions of such Clearing Participant and of each Options Participant that gives up such Clearing Participant's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Participant to such Options Participant, which authorization must be submitted to NASDAQ.

(b) On each business day at or prior to such time as may be prescribed by the Clearing Corporation, NOM shall furnish the Clearing Corporation a report of each Clearing Participant's matched trades.

#### **Sec. 16 Fees and Charges**

(a) *Participation Fees.* The Board in its discretion shall fix participation fees payable by Options Participants from time to time. Fees shall be payable in full on the first day of January, April, July and October on a non-refundable basis and shall be applied to the quarter beginning on that day.

(b) *Transaction Fees.* Options Participants shall pay a fee for each transaction they execute on NOM, as may be determined by the Board in its discretion. The Board may prescribe different, or no fees for different types of transactions conducted on NOM.

(c) *Other Fees.* In addition to the fees and charges specified in this Chapter, the Board may, from time to time, fix and impose other fees, assessments or charges to be paid to NOM by Options Participants or by classes of Options Participants with respect to applications, registrations, approvals, use of NOM and Trading System facilities or other services or privileges granted.

(d) *Liability for Payment of Fees.* An Options Participant that does not pay any fees, assessments, charges, fines or other amounts due to NOM within thirty (30) days after they have become due and payable shall be reported to the Board or its delegate which may, after giving reasonable notice to the Options Participant of such arrearages, suspend the Options Participant until payment is made or terminate the Options Participant's

participation on NOM. A person associated with an Options Participant who fails to pay any fine or other amounts due to NOM within thirty (30) days after such amount has become due and payable and after reasonable notice of such arrearages, may be suspended from association with an Options Participant until payment is made.

### **Section 17 Message Traffic Mitigation**

For the purpose of message traffic mitigation, based on NOM's traffic with respect to target traffic levels and in accordance with NOM's overall objective of reducing both peak and overall traffic:

(a) NOM will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. NASDAQ will, on a monthly basis, determine the ADV for each series listed on NOM and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on NOM, NASDAQ will delay delisting until there is no open interest in that options series.

(b) NOM will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the NASDAQ Options Market in real time and will not delay the sending of any messages.

(c) NOM will also prioritize price update messages and send out price updates before sending size update messages. This functionality will be applied to all options series listed on the NOM and in conjunction with the previously described replace on queue functionality will ensure that NOM quote update messages are the most current and relevant available.

(d) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, NOM will not disseminate the new bid or offer.

(e) All message traffic mitigation mechanisms which are used on NOM will be identical for the OPRA "top of the book" broadcast.

## **Chapter VII. Market Participants**

### **Sec. 1 Customer Orders and Order Entry Firms**

Order Entry Firms (OEFs) are those Options Participants representing as agent Customer Orders on NOM or trading as principal on NOM.

### **Sec. 2 Initial Market Maker Registration**

Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants. All Market Makers are designated as specialists on NOM for all purposes under the Exchange Act or Rules thereunder.

(a) To register as a Market Maker, a Participant must file an application in writing on such forms as NASDAQ Regulation may prescribe. NASDAQ Regulation reviews applications and considers an applicant's market making ability and such other factors as NASDAQ Regulation deems appropriate in determining whether to approve an applicant's registration as a Market Maker.

(b) The registration of any Participant as a Market Maker may be suspended or terminated by NASDAQ Regulation upon a determination that such Participant has failed to properly perform as a Market Maker.

(c) These Rules place no limit on the number of qualifying entities that may become Market Makers. However, based on system constraints, capacity restrictions or other factors relevant to protecting the integrity of the NOM Trading System the Board or its designee may limit access to the Trading System, for a period to be determined in the Board's discretion, pending any action required to address the issue of concern to the Board. To the extent that the Board places limitations on access to the Trading System on any Participant(s), such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filing under Section 19(b) of the Act.

### **Sec. 3 Continuing Market Maker Registration**

(a) An Options Participant that has qualified as an Options Market Maker may register to make markets in individual series of options.

(b) An Options Market Maker may become registered in a series by entering a registration request via a NASDAQ approved electronic interface with NASDAQ's systems. Registration shall become effective on the day the registration request is entered.

(c) An Options Market Maker's registration in a series shall be terminated if the market maker fails to enter quotations in the series within five (5) business days after the market maker's registration in the series becomes effective.

### **Sec. 4 Good Standing for Market Makers**

(a) To remain in good standing as a Market Maker, the Market Maker must:

i. continue to meet the requirements established in SEC Rule 15c3-1(a)(6)(i), and the general membership requirements set forth in the Rule 1010 Series of the NASDAQ Rules and the requirements for Market Makers as set forth in NASDAQ Rule 4611.

ii. continue to satisfy the Market Maker qualification requirements specified by NASDAQ, as amended from time to time by NASDAQ;

iii. comply with the Rules of the Exchange as well as the Rules of the OCC and the Federal Reserve Board; and

iv. pay on a timely basis such Participation, transaction and other fees as the Exchange and NOM shall prescribe.

(b) The good standing of a Market Maker may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or the Market Maker violates any of its agreements with the Exchange or any of the provisions of the Rules.

### **Sec. 5 Obligations of Market Makers**

(a) In registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Ordinarily, Market Makers are expected to:

i. During trading hours, a Market Maker must maintain a two-sided market, pursuant to Section 6(d)(i) of this Chapter VII, in those option series in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market.

ii. Participate in opening the market pursuant to Chapter VI of these Rules.

iii. Engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

iv. Compete with other Market Makers in all series in which the Market Maker is registered to trade.

v. Make markets that will be honored for the number of contracts entered into NOM's system in all series of options in which the Market Maker is registered to trade.

vi. Update quotations in response to changed market conditions in all series of options in which the Market Maker is registered to trade.

vii. Maintain active markets in all series in which the Market Maker is registered.

viii. Honor Principal Acting as Agent ("P/A") and Satisfaction orders that the Trading System routes to away markets through the InterMarket Linkage pursuant to Chapter XII of these Rules.

ix. For each options series, a Market Maker will be designated as responsible for settling Principal Acting as Agent ("P/A") and Satisfaction orders that may be sent to away markets through the InterMarket Linkage pursuant to Chapter XII of these Rules (an InterMarket Linkage Market Maker" or "ILM"). The ILM shall act with due diligence with regard to the interests of orders entrusted to him and fulfill in a professional manner all other duties of an agent, including, but not limited to, ensuring that such orders, regardless of their size or source, receive proper representation and timely, best possible execution in accordance with the terms of the orders and the rules and policies of the Exchange. The ILM must provide NOM with written instructions for the routing of any P/A orders the ILM may send through NOM to the InterMarket Linkage. NOM will automatically route P/A and Satisfaction orders on the basis of these written instructions.

(b) Options Market Makers should not effect purchases or sales on NOM except in a reasonable and orderly manner.

(c) If NASDAQ Regulation finds any substantial or continued failure by an Options Market Maker to engage in a course of dealings as specified in paragraph (a) of this Section, such Options Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the Market Maker is registered. Nothing in this Section will limit any other power of the Board under these Rules, or procedures of NOM with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Section 5.

## **Sec. 6 Market Maker Quotations**

(a) *Size Associated with Quotes.* A Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the Market Maker is willing to buy or sell. The best bid and best offer entered by a Market Maker must have a size of at least ten (10) contracts.

(b) *Two-Sided Quotes.*

A Market Maker that enters a bid (offer) in a series in which he is registered on NOM must enter an offer (bid).

(c) Firm Quotes.

i. All quotes and orders entered into the System by Options Participants are firm under this Rule and Rule 602 of Regulation NMS under the Exchange Act ("Rule 602") for the number of contracts specified and according to the requirements of paragraph (a) above.

ii. Market Maker bids and offers are not firm under this Rule and Rule 602:

1) for the period prior to the Opening Cross; or

2) if any of the circumstances provided in paragraph (c)(3) of Rule 602 exist.

(d) Continuous Quotes. A Market Maker must enter continuous bids and offers for the options series to which it is registered, as follows:

i. On a daily basis, a Market Maker must participate in the pre-opening phase and thereafter make markets consistent with the applicable quoting requirements specified in these rules, on a continuous basis in at least seventy-five percent (75%) of the options series in which the Market Maker is registered.

ii. A Market Maker may be called upon by NASDAQ Regulation to submit a single bid or offer or maintain continuous bids and offers in one or more of the series to which the Market Maker is registered whenever, in the judgment of NASDAQ Regulation, it is necessary to do so in the interest of fair and orderly markets.

(e) Options Classes Other Than Those in Which Registered. A Market Maker shall be considered an OEF under the Rules in all classes of options listed on NOM. The total number of contracts executed by a Market Maker in series in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

**Sec. 7 Securities Accounts and Orders of Market Makers**

(a) Identification of Accounts. In a manner prescribed by NASDAQ Regulation, each Market Maker shall file with NASDAQ Regulation and keep current a list identifying all accounts for stock, options and related securities trading in which the Market Maker may, directly or indirectly, engage in trading activities or over which it exercises investment discretion. No Market Maker shall engage in stock, options or related securities trading in an account which has not been reported pursuant to this Section.

(b) Reports of Orders. Each Market Maker shall, upon request and in the prescribed form, report to NASDAQ Regulation every order entered by the Market Maker for the purchase or sale of (i) a security underlying options traded on NOM, or (ii) a security convertible

into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to paragraph (a) of this Section. The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

(c) *Joint Accounts.* No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any options contract unless each participant in such joint account is an Options Participant and unless such account is reported to, and not disapproved by, NASDAQ Regulation. Such reports in a form prescribed by NASDAQ Regulation shall be filed with NASDAQ Regulation before any transaction is effected on NOM for such joint account. A participant in a joint account must:

- i. Be either a Market Maker or a Clearing Participant that carries the joint account.
- ii. File and keep current a completed application on such form as is prescribed by NASDAQ Regulation.
- iii. Be jointly and severally responsible for assuring that the account complies with all the Rules of the Exchange.
- iv. Not be a Market Maker registered to the same options classes to which the joint account holder is also registered as a Market Maker.

Coimmentary .01 Reports of accounts and transactions required to be filed with NOM pursuant to this Rule relate only to accounts in which a Market Maker, as an individual, directly or indirectly controls trading activities or has a direct interest in the profits or losses of such account. Such reports would be required for accounts over which a Market Maker exercises investment discretion as well as a Market Maker's proprietary accounts.

### **Sec. 8 Letters of Guarantee**

(a) *Required of Each Market Maker.* No Market Maker shall make any transactions on NOM unless a Letter of Guarantee has been issued for such Participant by a Clearing Participant and filed with NASDAQ Regulation, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Section.

(b) *Terms of Letter of Guarantee.* A Letter of Guarantee shall provide that the issuing Clearing Participant accepts financial responsibilities for all NOM Transactions made by the guaranteed Participant.

(c) *Revocation of Letter of Guarantee.* A Letter of Guarantee filed with NASDAQ Regulation shall remain in effect until a written notice of revocation has been filed with NASDAQ Regulation by the Guarantor Clearing Participant. A revocation shall in no

way relieve a Clearing Participant of responsibility for transactions guaranteed prior to the effective date of such revocation.

### **Sec. 9 Financial Requirements for Market Makers**

(a) Each Market Maker shall maintain (i) net liquidating equity in its Market Maker account of not less than \$200,000, and in conformity with such guidelines as the Board may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3-1. Each Market Maker which is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation. This equity requirement, as well as all other provisions of the section (including capital maintenance requirements), applies to each Market Maker account, without regard to the number of Market Maker accounts per firm. The term "net liquidating equity" means the sum of positive cash balances and long securities positions less negative cash balances and short securities positions.

(b) Each Market Maker that makes an arrangement to finance his transactions as a Market Maker must identify in writing to NASDAQ Regulation the source of the financing and its terms. NASDAQ Regulation must be informed immediately of the intention of any party to terminate or change any such arrangement.

### **Sec. 10 Limitations on Dealings**

(a) *General Rule.* A Market Maker on NOM may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier between the market making activities and the Other Business Activities. "Other Business Activities" means:

- i. conducting an investment banking or public securities business;
- ii. making markets in the stocks underlying the options in which it makes markets; or
- iii. functioning as an Order Entry Firm, except where such Market Maker, or broker-dealer with which such Market Maker is affiliated: (A) engages solely in proprietary trading and does not, under any circumstance, maintain customer accounts or solicit or accept orders or funds from or on behalf of customers, including broker-dealers and other securities firms, and (B) does not place or accept or utilize any order types which call for the participation of, or interaction with, public customers, including broker-dealers and other securities firms.

(b) "*Information Barrier*". For the purposes of this Section, an Information Barrier is an organizational structure in which:

- i. The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between designated representatives of an Options Participant performing the function of a Market Maker and persons

conducting the Other Business Activities. However, upon request and not on his own initiative, a designated representative of an Options Participant performing the function of a Market Maker may furnish to a person performing the function of an OEF or other persons at the same firm or an affiliated firm ("affiliated persons"), the same market or trading information, so long as the Market Maker also may make available such information to non-affiliated persons with whom the Market Maker may have the same type of business relationship. The designated representative of a Market Maker must provide such information to affiliated persons in the same manner that he would make such information available to a non-affiliated person.

ii. There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:

1) the designated representative of an Options Participant performing the function of a Market Maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

2) all information pertaining to the Market Maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier, except as provided in Paragraph (b)(i) of this Section 10.

(c) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:

i. the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the Market Maker's responsibilities under the Rules of the Exchange; and

ii. the same person or persons (the "Supervisor") may be responsible for the supervision of the market making and OEF functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

1) actually perform the function of either a Market Maker or OEF;

2) provide to any person performing the function of an OEF any information relating to market making activity beyond the information that a designated representative of an Options Participant performing the function of a Market Maker may provide under subparagraph (b)(i), above; nor

3) provide a designated representative of an Options Participant performing the function of Market Maker with specific information regarding the firm's pending transactions or order flow arising out of its OEF activities.

(d) Documenting and Reporting of Information Barrier Procedures. An Options Participant implementing an Information Barrier pursuant to this Section shall submit to NOM a written statement setting forth:

i. The manner in which it intends to satisfy the conditions in paragraph (b) of this Section, and the compliance and audit procedures it proposes to implement to ensure that the Information Barrier is maintained;

ii. The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

iii. A commitment to provide NASDAQ Regulation with such information and reports as NASDAQ Regulation may request relating to its transactions;

iv. A commitment to take appropriate remedial action against any person violating this Section or the Participant's internal compliance and audit procedures adopted pursuant to paragraph (c)(i) of this Section, and that it recognizes that NASDAQ Regulation may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a Market Maker, in the event of such a violation;

v. Whether the Participant or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Participant's Information Barrier, which procedures, at a minimum, must be the same as those used by the Participant or the affiliate to clear for unaffiliated third parties; and

vi. That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Section may be a violation of Rules 10b-5 and 14e-3 under the Exchange Act or one or more other provisions of the Exchange Act, the Rules thereunder or the Rules of the Exchange, and that NASDAQ Regulation intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(e) Exchange Approval of Information Barrier Procedures. The written statement required by paragraph (d) of this Section must detail the internal controls that the Participant will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If NASDAQ Regulation determines that the organizational structure and the compliance and audit procedures proposed by the Participant are acceptable under this Section, NASDAQ Regulation shall so inform the Participant, in writing. Absent NASDAQ Regulation finding a Participant's Information Barrier procedures acceptable, a Market Maker may not conduct Other Business Activities.

(f) Clearing Arrangements. Paragraph (c)(v) permits a Options Participant or an affiliate of the Options Participant to clear the Participant's Market Maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:

i. The procedures must provide that any information pertaining to Market Maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Section to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

ii. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any Market Maker to meet market making or other obligations under the Exchange's and NOM Rules.

### **Sec. 11 Mass Cancellation of Trading Interest**

An Options Participant may simultaneously cancel all its bids, offers, and orders in all series of options by requesting NOM operations staff to effect such cancellation.

### **Sec 12. Order Exposure Requirements**

With respect to orders routed to NOM, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on NOM for at least three (3) seconds or (ii) the Options Participant has been bidding or offering on NOM for at least three (3) seconds prior to receiving an agency order that is executable against such bid or offer.

#### **Commentary:**

.01 Section 12 prevents Options Participants from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on NOM an opportunity to either trade with the agency order or to trade at the execution price when the Options Participant was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Options Participant to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on NOM and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of Section 12 for an Options Participant to be a party to any arrangement designed to circumvent Section 12 by providing an opportunity for a customer to regularly

execute against agency orders handled by the Options Participant immediately upon their entry into NOM.

.02 It will be a violation of Section 12 for an Options Participant to cause the execution of an order it represents as agent on NOM against orders it solicited from members and non-member broker-dealers, whether such solicited orders are entered into NOM directly by the Options Participant or by the solicited party (either directly or through another Options Participant), if the Options Participant fails to expose orders on NOM as required by Section 12.

.03 With respect to non-displayed trading interest, including the reserve portion, the exposure requirement of subsection (i) is satisfied if the displayable portion of the order is displayed at its displayable price for three seconds.

.04 Prior to or after submitting an order to NOM, an Options Participant cannot inform another Options Participant or any other third party of any of the terms of the order.

## **Chapter VIII. Exercises and Deliveries**

### **Sec. 1 Exercise of Options Contracts**

(a) Subject to the restrictions set forth in Chapter III, Section 9 of these Rules (Exercise Limits) and to such restrictions as may be imposed pursuant to Chapter III, Section 12 of these Rules (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Participant in the account of which such options contract is carried with the Clearing Corporation. Participants may establish fixed procedures as to the latest time they will accept exercise instructions from customers.

(b) Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by the Clearing Corporation, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following NOM requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

i. take no action and allow exercise determinations to be made in accordance with the Clearing Corporation's Ex-by-Ex procedure where applicable; or

ii. submit a "Contrary Exercise Advice" to the Options Clearing Corporation through the participant's clearing firm by the deadline specified in paragraph (c) below. A Contrary Exercise Advice is a communication either: (a) to not exercise an option that would be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure, or (b) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure. A Contrary Exercise Advice may be submitted by a Participant by using the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a Participant and where the option is listed, or such other method as NOM may prescribe. A Contrary Exercise Advice may be canceled by filing an Advice Cancel at any time up to the submission cut-off times specified below.

(c) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, Participants may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice. For non-customer accounts, Participants may not accept exercise instructions after 5:30 p.m. Eastern Time but have until 6:30 p.m. Eastern Time to submit a Contrary Exercise Advice if such Participant employs an electronic

submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Supplemental Material .03, Participants are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Participants do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

(d) If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Participants must either:

i. submit to the Options Clearing Corporation, a Contrary Exercise Advice, in a manner specified by OCC, within the time limits specified in paragraph (c) above if the holder intends to exercise the option; or

ii. take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing Corporation require that Participants wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with NOM.

(e) A Participant that has accepted the responsibility to indicate final exercise decisions on behalf of another Participant or non- Participant broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to NOM. Such Participant may establish a processing cut-off time prior to NOM's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Participant that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

(f) Notwithstanding the foregoing, Participants may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be filed with NOM no later than 12:00 noon Eastern Time on the first business day following the respective expiration. An exercise decision after the exercise cut-off time may be made:

(i) in order to remedy mistakes or errors made in good faith; or

(ii) where exceptional circumstances have restricted an option holder's ability to inform a Participant of a decision regarding exercise, or a Participant's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Participant seeking to rely on such exceptions.

(g) In the event NOM provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the last business day before the expiration date

indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph (c) of this Section 1. However, Participants may deliver a Contrary Exercise Advice or Advice Cancel to NOM within 2 hours 30 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. Eastern Time deadline found in Paragraph(c) of this Section 1 for customer accounts and non-customer accounts where such Participant employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Participants that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Paragraph(c) of this Section 1.

(h) Modification of cut-off time.

i. NOM may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph (h)(i), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market bids and offers and/or execute or route orders; or other similar occurrences.

ii. NOM with at least one (1) business day prior advance notice, by 12:00 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph (h)(ii), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

(i) Submitting or preparing an exercise instruction, contrary exercise advice or advice cancel after the applicable exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

(j) The failure of any Participant to follow the procedures in this Section 1 may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by NOM.

(k) Clearing Participants must follow the procedures of the Clearing Corporation when exercising American-style cash-settled index options contracts issued or to be issued in any account at the Clearing Corporation. Options Participants must also follow the procedures set forth below with respect to American-style cash-settled index options:

i. For all contracts exercised by the Options Participant or by any customer of the Options Participant, an "exercise advice" must be delivered by the Options Participant in such form or manner prescribed by NASDAQ Regulation no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

ii. Subsequent to the delivery of an "exercise advice," should the Options Participant or a customer of the Options Participant determine not to exercise all or part of the advised contracts, the Options Participant must also deliver an "advice cancel" in such form or manner prescribed by NASDAQ Regulation no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day. iii. NASDAQ Regulation may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to this paragraph (k) if unusual circumstances are present. iv. No Options Participant may prepare, time stamp or submit an "exercise advice" prior to the purchase of the contracts to be exercised if the Options Participant knew or had reason to know that the contracts had not yet been purchased.

v. The failure of any Options Participant to follow the procedures in this paragraph (k) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by NASDAQ Regulation.

vi. Preparing or submitting an "exercise advice" or "advice cancel" after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.

vii. The procedures set forth in subparagraphs (i)-(ii) of this subparagraph (k) do not apply (a) on the business day prior to expiration in series expiring on a day other than a business day or (b) on the expiration day in series expiring on a business day.

viii. Exercises of American-style, cash-settled index options (and the submission of corresponding "exercise advice" and "advice cancel" forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

1) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in

the option is delayed, halted, or suspended if it can be documented, in a form prescribed by NASDAQ Regulation, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.

2) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.

3) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern Time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern Time. In addition, if trading resumes following such a trading halt (pursuant to the procedure described in Section 8 of Chapter V of these Rules (Opening the Market)), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph 3) are subject to the authority of NASDAQ Regulation to impose restrictions on transactions and exercises pursuant to Section 14 of Chapter III of these Rules (Limit on Outstanding Uncovered Short Positions).

4. NASDAQ Regulation may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.

#### *Supplementary Material*

.01 For purposes of this Section 1, the terms "customer account" and "non-customer account" have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively

.02 Each Participant shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a-4(b).

.03 Although the deadline for all option holders to make a final decision to exercise or not exercise is 5:30 p.m. Eastern Time, the deadline for the submission of the Contrary Exercise Advice in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise.

(i) For electronic time stamp submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Participants must be received by NOM by 6:30 p.m. Eastern Time.

(ii) For manual submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Participants must be received by NOM by 5:30 p.m. Eastern Time.

.04 Each Participant shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.05 The filing of a Contrary Exercise Advice required by this Section 1 does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.

## **Sec. 2 Allocation of Exercise Notices**

(a) Each Options Participant shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in such Options Participant's customers' accounts. The allocation shall be on a "first in, first out," or automated random selection basis that has been approved by NASDAQ Regulation, or on a manual random selection basis that has been specified by NASDAQ Regulation. Each Options Participant shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' account, explaining its manner of operation and the consequences of that system.

(b) Each Options Participant shall report its proposed method of allocation to NASDAQ Regulation and obtain NASDAQ Regulation's prior approval thereof, and no Options Participant shall change its method of allocation unless the change has been reported to and approved by NASDAQ Regulation. The requirements of this paragraph shall not be applicable to allocation procedures submitted to and approved by another SRO having comparable standards pertaining to methods of allocation.

(c) Each Options Participant shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

## **Sec. 3 Delivery and Payment**

(a) Delivery of the underlying security upon the exercise of an options contract, and payment of the aggregate exercise price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation.

(b) As promptly as possible after the exercise of an options contract by a customer, the Options Participant shall require the customer to make full cash payment of the aggregate exercise price in the case of a call options contract, or to deposit the underlying security in the case of a put options contract, or to make the required margin deposit in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange, the provisions of Chapter XIII of these Rules, and the applicable regulations of the Federal Reserve Board.

(c) As promptly as practicable after the assignment to a customer of an exercise notice the Options Participant shall require the customer to deposit the underlying security in the case of a call options contract if the underlying security is not carried in the customer's account, or to make full cash payment of the aggregate exercise price in the case of a put options contract, or in either case to deposit the required margin in respect thereof if the

transaction is effected in a margin account, in accordance with the Rules of the Exchange, the provisions of Chapter XIII of these Rules, and the applicable regulations of the Federal Reserve Board.

## **Chapter IX. Records, Reports and Audits**

### **Sec. 1 Maintenance, Retention and Furnishing of Books, Records and Other Information**

(a) Each Options Participant shall make, keep current and preserve such books and records as NASDAQ Regulation may prescribe pursuant to the Rules of the Exchange and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

(b) No Options Participant shall refuse to make available to NASDAQ Regulation such books, records or other information as may be called for under the Rules of the Exchange or as may be requested in connection with an investigation by NASDAQ Regulation.

(c) All Options Participants shall prepare and make available all books and records as required by the Rules of the Exchange in English and U.S. dollars.

### **Sec. 2 Reports of Uncovered Short Positions**

(a) Upon request of NASDAQ Regulation, each Options Participant shall submit a report of the total uncovered short positions in each options contract of a class dealt in on NOM showing:

i. positions carried by such Options Participant for its own account and

ii. positions carried by such Options Participant for the accounts of Customers;

iii. provided that the Options Participant shall not report positions carried for the accounts of other Options Participants where such other Options Participants report the positions themselves.

(b) Such report shall be submitted not later than the second business day following the date the request is made.

### **Sec. 3 Financial Reports and Audits**

Each Options Participant shall submit to NASDAQ Regulation answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange or NASDAQ Regulation under the Rules of the Exchange.

### **Sec. 4 Automated Submission of Trade Data**

(a) An Options Participant shall submit requested trade data elements, in such automated format as may be prescribed by NASDAQ Regulation from time to time, in regard to a transaction(s) that is the subject of the particular request for information.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the Options Participant for any account in which such Participant, or any person associated with the Options Participant, is directly or indirectly interested, the Participant shall submit or cause to be submitted, any or all of the following information as requested by NASDAQ Regulation:

i. Clearing house number or alpha symbol as used by the Options Participant submitting the data;

ii. Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the Options Participant(s) on the opposite side of the transaction;

iii. Identifying symbol assigned to the security and where applicable for the options month and series symbols;

iv. Date transaction was executed;

v. Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale, as well as:

1) the number of shares traded or held by accounts for which options data is submitted;

2) where applicable, the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;

vi. Transaction price;

vii. Account number; and

viii. Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the Options Participant for any Customer, such Options Participant shall submit or cause to be submitted any or all the following information as requested by NASDAQ Regulation:

i. Data elements (i) through (viii) of paragraph (b) above;

ii. If the transaction was effected for a Public Customer, customer name, address(es), branch office number, representative number, whether the order was discretionary, solicited or unsolicited, date the account was opened and employer name and tax identification number(s); and

iii. If the transaction was effected for a Participant broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of NASDAQ Regulation's request.

(d) In addition to the above trade data elements, an Options Participant shall submit such other information in such automated format as may be prescribed by NASDAQ Regulation, as may from time to time be required.

(e) NASDAQ Regulation may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (b) and (c) above be submitted to NASDAQ Regulation in an automated format.

### **Sec. 5 Regulatory Cooperation**

(a) NASDAQ Regulation may enter into agreements that provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes, with domestic and foreign self-regulatory organizations, as well as associations and contract markets and the regulators of such markets.

(b) No Options Participant, partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange or NASDAQ Regulation shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange or NASDAQ Regulation requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange or NASDAQ Regulation pursuant to paragraph (a) of this Section, including but not limited to Participants and affiliates of the Intermarket Surveillance Group. The requirements of this paragraph (b) shall apply regardless whether the Exchange or NASDAQ Regulation has itself initiated a form investigation or disciplinary proceeding.

(c) Whenever information is requested by NASDAQ Regulation pursuant to this Section, the Options Participant or person associated with a Participant from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Participant or person would have in the case of any other request for information initiated by NASDAQ Regulation pursuant to NASDAQ Regulation's investigative powers.

### **Sec. 6 Risk Analysis of Market Maker Accounts**

(a) Each Clearing Participant that clears or guarantees the transactions of Market Makers pursuant to Chapter VII, Section 8 of these Rules (Letters of Guarantee), shall establish and maintain written procedures for assessing and monitoring the potential risks to the Participant's capital over a specified range of possible market movements of positions maintained in such Market Maker accounts and such related accounts as NASDAQ Regulation shall from time to time direct.

i. Current procedures shall be maintained as current and filed with NASDAQ Regulation.

ii. The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the position(s) within the organization responsible for the risk management.

(b) Each affected Participant shall at a minimum assess and monitor its potential risk of loss from options Market Maker accounts each business day as of the close of business the prior day through use of a NASDAQ Regulation-approved computerized risk analysis program, which shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by NASDAQ Regulation:

i. The estimated loss to the Clearing Participant for each Market Maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative fifteen percent (15%) to positive fifteen percent (15%).

ii. The Participant shall calculate volatility using a method approved by NASDAQ Regulation, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.

iii. Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox- Reubenstein.

iv. At a minimum, written reports shall be generated which describe for each market scenario:

1) projected loss per options class by account;

2) projected total loss per options class for all accounts; and

3) projected deficits per account and in aggregate.

Upon direction by NASDAQ Regulation, each affected Participant shall provide to NASDAQ Regulation such information as it may reasonably require with respect to the Participant's risk analysis for any or all of its Market Maker accounts.

### **Sec. 7 Anti-Money Laundering Compliance Program**

Each Options Participant shall comply with NASDAQ Rule 3011.

## **Chapter X. Discipline and Summary Suspensions**

### **Sec. 1 Imposition of Suspension**

(a) An Options Participant or person associated with an Options Participant that has been expelled or suspended from any SRO or barred or suspended from being associated with a Participant of any SRO, or an Options Participant that is in such financial or operating difficulty that NASDAQ Regulation determines that the Options Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Options Participants, or NOM, may be summarily suspended.

(b) NASDAQ Regulation may limit or prohibit any person with respect to access to services offered by NOM if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is an Options Participant, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Options Participants or the Exchange.

(c) In the event a determination is made to take summary action pursuant to this Section, notice thereof will be sent to the SEC.

(d) Any person aggrieved by any summary action taken under this Section shall be promptly afforded an opportunity for a hearing by NASDAQ Regulation in accordance with the provisions of the 9500 Rules of the Exchange.

(e) A summary suspension or other action taken pursuant to this Chapter IX shall not be deemed to be disciplinary action under the 9500 Rules of the Exchange. The provisions of such 9500 Rules shall be applicable regardless of any action taken pursuant to this Chapter X.

### **Sec. 2 Investigation Following Suspension**

(a) Every Options Participant or person associated with a Participant against which action has been taken in accordance with the Summary Suspension procedures of these Rules shall immediately afford every facility required by NASDAQ Regulation for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in NOM options contracts maintained by the Options Participant and each of his or its Customers.

(b) Paragraph (a) includes, without limitation, the furnishing of such books and records of the Options Participant or person associated with an Options Participant and the giving of such sworn testimony as may be requested by NASDAQ Regulation.

### **Sec. 3 Reinstatement Following Suspension**

(a) General.

i. An Options Participant, person associated with an Options Participant or other person suspended or limited or prohibited with respect to access to services offered by NOM under the Summary Suspension procedures of these Rules may apply for reinstatement within the time period set forth below.

ii. Notice of an application for reinstatement shall be given to the Secretary by the Participant and shall be posted by NASDAQ Regulation at least five (5) business days prior to the consideration by NASDAQ Regulation of said application.

iii. NASDAQ Regulation may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Participants, and NOM.

(b) Suspension Due to Operating Difficulty.

i. An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within six (6) months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.

ii. If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of the 9000 Rules of the Exchange

(c) Suspension Due to Financial Difficulty.

i. An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to NOM services, must file any application for reinstatement within thirty (30) days of such action.

ii. Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by NASDAQ Regulation.

iii. The Participant status of an Options Participant summarily suspended by reason of financial difficulty may not be disposed of by NASDAQ Regulation until that Participant has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of the 9000 Rules of the Exchange

**Sec. 4 Failure to Obtain Reinstatement**

If an Options Participant suspended under the provisions of this Chapter X fails or is unable to apply for reinstatement in accordance with Section 3 of this Chapter X or fails

to obtain reinstatement as therein provided, his or its Participant status shall be disposed of by NASDAQ Regulation in accordance with the 9500 Rules of the Exchange

### **Sec. 5 Termination of Rights by Suspension**

An Options Participant suspended under the provisions of this Chapter X shall be deprived during the term of his or its suspension of all rights and privileges of Participation.

### **Sec. 6 Contracts of Suspended Participants**

(a) When an Options Participant, other than a Clearing Participant, is suspended pursuant to Chapter X of these Rules (Summary Suspension), all open short positions of the suspended Options Participant in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all Participants carrying such positions for the account of the suspended Participant; provided that NASDAQ Regulation may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Participants of NOM.

(b) No temporary waiver hereunder by NASDAQ Regulation shall relieve the suspended Options Participant of its obligations or of damages, nor shall it waive the close out requirements of any other Rules.

(c) When a Clearing Participant is suspended pursuant to Chapter X (Summary Suspension) of these Rules, the positions of such Clearing Participant shall be closed out in accordance with the Rules of the Clearing Corporation.

### **Sec. 7 Penalty for Minor Rule Violations**

The following NOM rule and policy violations may be determined by NASDAQ Regulation to be minor in nature. If so, NASDAQ Regulation may, with respect to any such violation, proceed under the 9200 Series Rules of the Exchange and impose the fine set forth below. NASDAQ Regulation is not required to proceed under said Sections as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under the 9200 Series Rules of the Exchange as to any such violation. A subsequent violation is calculated on the basis of a rolling 24-month period ("Period").

(a) *Position Limit Violations.* Violations of Chapter III, Section 7 of these Rules (Position Limit) that continue over consecutive business days will be subject to a separate fine, pursuant to this paragraph (a), for each day during which the violation occurs and is continuing

i. *Customer Accounts.* For purposes of this subparagraph (i) only, all accounts of non-Options Participant broker-dealers will be treated as customer accounts. In calculating fine thresholds under this subparagraph (i) for each Options Participant, all violations occurring within the Period in all of that Participant's customer accounts are to be added together. For violations of Chapter III, Section 7 of these Rules occurring in customer accounts, the Participant shall be subject to fines as follows, with a minimum fine amount of \$100:

Number of Cumulative Fine Amount Violations Within One Period

<u>1 to 6 (up to 5% in excess of applicable limit)</u>	<u>Letter of Caution</u>
<u>1 to 6 (above 5% in excess of applicable limit)</u>	<u>\$1 per contract</u>
<u>7 to 12</u>	<u>\$1 per contract over limit</u>
<u>13 or more</u>	<u>\$5 per contract over limit</u>

ii. *Options Participant Accounts.* For violations occurring in an Options Participant's account (i.e., proprietary accounts and accounts of other Options Participants), the Options Participant whose account exceeded the limits shall be subject to fines as follows, with a minimum fine amount of \$100. In calculating fine thresholds under this paragraph (ii) for each Options Participant, all violations occurring within the Period in all of that Participant's accounts, (i.e., proprietary accounts and accounts of other Options Participants) are to be added together:

Number of Cumulative Fine Amount Violations Within One Period

<u>1 to 3 (up to 5% in excess of applicable limit)</u>	<u>Letter of Caution</u>
<u>1 to 3 (above 5% in excess of applicable limit)</u>	<u>\$1 per contract</u>
<u>4 to 6</u>	<u>\$1 per contract over limit</u>
<u>7 or more</u>	<u>\$5 per contract over limit</u>

(b) *Order Entry.* Violations of Chapter VII, Section 6(a) - (c) of these Rules, (Market Maker Quotations) regarding restrictions on orders entered by Market Makers, will be subject to the fines listed below. Each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations.

Number of Violations Fine Amount Within One Period

<u>1 to 5</u>	<u>Letter of Caution</u>
<u>6 to 10</u>	<u>\$500</u>
<u>11 to 15</u>	<u>\$1000</u>
<u>16 to 20</u>	<u>\$2000</u>

(c) Continuous Quotes. Violations of Chapter VII, Section 6(d) of these Rules regarding Market Maker continuous bids and offers shall be subject to the fines listed below. Violations of the rule that continue over consecutive trading days will be subject to a separate fine, pursuant to this paragraph (d), for each day during which the violation occurs and is continuing up to a limit of fifteen consecutive trading days. In calculating fine thresholds for each Market Maker, all violations occurring within the Period in any of the Market Makers registered series are to be added together.

Number of Cumulative Fine Amount Violations Within One Period

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1	Letter of Caution
2 or more	\$300 per day

## **Chapter XI. Doing Business with the Public**

### **Sec. 1 Eligibility**

An OEF may only transact business with Public Customers if such Participant also is a member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Exchange Act pursuant to which such other exchange or association shall be the designated options examining authority for the OEF. Eligibility to transact business with the public shall be based upon an OEF's meeting the general requirements set forth in this Chapter and the net capital requirements set forth in Exchange Act Rule 15c3-1 (Net Capital Requirements). Such approval may be withdrawn if any such requirements cease to be met.

### **Sec. 2 Registration of Options Principals**

(a) No OEF shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management and supervision of the OEF's business pertaining to options contracts shall be designated as Options Principals and shall have responsibility for the overall oversight of the OEF's options related activities on the Exchange.

(b) In connection with their registration, Options Principals shall file an application with the Secretary on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business, and shall sign an agreement to abide by the Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that Options Principals of Participants that are members of another national securities exchange or association that has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such Options Principals are approved by and registered with such other exchange or association.

(c) Termination of employment or affiliation of any Options Principal in such capacity shall be reported promptly to the Exchange together with a copy of the Uniform Termination Notice for Securities Industry Registration ("Form U-5") filed with respect thereto and a statement of the reason for such termination.

### **Sec. 3 Registration of Representatives**

(a) No OEF shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange.

(b) Persons who perform duties for the OEF which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the OEF.

(c) In connection with their registration, designated representatives shall file an application on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the securities business and options transactions, and shall sign an agreement to abide by the Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that designated representatives of OEFs who are Participants of another national securities exchange or association that has standards of approval comparable and acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such designated representatives are approved by and registered with such other exchange or association.

#### **Sec. 4 Other Affiliations of Registered Persons**

Except with the express written permission of NASDAQ Regulation, every registered person shall devote his entire time during business hours to the business of the OEF employing him, or to the business of its affiliates that are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the OEF's designated examining authority.

#### **Sec. 5 Discipline, Suspension, Expulsion of Registered Persons**

The Exchange or NASDAQ Regulation may discipline, suspend or terminate the registration of any registered person for violation of the Rules of the Exchange or the Rules of the Clearing Corporation.

#### **Sec. 6 Branch Offices**

(a) Every OEF approved to do options business with the public under this Chapter shall file with NASDAQ Regulation and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office.

(b) No branch office of an OEF shall transact options business with the public unless the manager of such branch office has been qualified as an Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three (3) representatives are located so long as the OEF can demonstrate to the satisfaction of NASDAQ Regulation that the options activities of such branch offices are appropriately supervised by an Options Principal.

#### **Sec. 7 Opening of Accounts**

(a) *Approval Required.* No OEF shall accept an order from a Public Customer to purchase or write an options contract unless the Public Customer's account has been approved for options transactions in accordance with the provisions of this Section.

(b) *Diligence in Opening Account.* In approving a Public Customer's account for options transactions, an OEF shall exercise due diligence to learn the essential facts as to the Public Customer and his investment objectives and financial situation, and shall make a record of such information, which shall be retained in accordance with SEC Rule 17a-4

under the Exchange Act. Based upon such information, the branch office manager or other Options Principal shall approve in writing the Public Customer's account for options transactions; provided, that if the branch office manager is not an Options Principal, his approval shall within a reasonable time be confirmed by an Options Principal.

i. In fulfilling its obligations under this paragraph (b) with respect to options Public Customers that are natural persons, an OEF shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1) investment objectives (e.g., safety of principal, income, growth, trading profits, speculation);

2) employment status (name of employer, self-employed or retired);

3) estimated annual income from all sources;

4) estimated net worth (exclusive of primary residence);

5) estimated liquid net worth (cash, securities, other);

6) marital status;

7) number of dependents;

8) age; and

9) investment experience and knowledge (e.g., number of years, size, frequency and type of transactions for options, stocks and bonds, commodities, other).

ii. In addition to the information required in subparagraph (b)(i) above, the Public Customer's account records shall contain the following information, if applicable:

1) the source or sources of background and financial information (including estimates) concerning the Public Customer;

2) discretionary trading authorization, including agreement on file, name, relationship to Public Customer and experience of person holding trading authority;

3) date(s) options disclosure document(s) furnished to Public Customer;

4) nature and types of transactions for which account is approved

(e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions);

5) name of representative;

6) name of the Options Principal approving account;

7) date of approval; and

8) dates of verification of currency of account information.

iii. Refusal of a Public Customer to provide any of the information called for in this paragraph (b) shall be so noted on the Public Customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

(c) Verification of Public Customer Background and Financial Information. The background and financial information upon which the account of every new Public Customer that is a natural person has been approved for options trading, including all of the information required in paragraph (b)(ii) of this Section, unless the information is included in the Public Customer's account agreement, shall be sent to the Public Customer for verification or correction within fifteen (15) days after the Public Customer's account has been approved for options transactions. A copy of the background and financial information on file with the OEF shall also be sent to the Public Customer for verification within fifteen (15) days after the OEF becomes aware of any material change in the Public Customer's financial situation. Absent advice from the Public Customer to the contrary, the information will be deemed to be verified.

(d) Agreements to Be Obtained. Within fifteen (15) days after a Public Customer's account has been approved for options transactions, an OEF shall obtain from the Public Customer a written agreement that the account shall be handled in accordance with the Rules of the Exchange and the Rules of the Clearing Corporation and that such Public Customer, acting alone or in concert with others, will not violate the position or exercise limits set forth in Chapter III, Section 7 and 9 of these Rules.

(e) Options Disclosure Documents to Be Furnished. At or prior to the time a Public Customer's account is approved for options transactions, an OEF shall furnish the Public Customer with one (1) or more current options disclosure documents issued by the OCC in accordance with the requirements of Section 15 of this Chapter XI (Delivery of Current Options Disclosure Documents and Prospectus).

(f) Every OEF transacting business with the public in uncovered options contracts shall develop, implement and maintain specific written procedures governing the conduct of such business that shall at least include the following:

i. specific criteria and standards to be used in evaluating the suitability of a Public Customer for uncovered short options transactions;

ii. specific procedures for approval of accounts engaged in writing uncovered short options contracts (which for the purposes of this Section shall include combinations and any transactions that involve naked writing), including written approval of such accounts by an Options Principal;

iii. designation of the Senior Options Principal and/or Compliance Options Principal as the person responsible for approving accounts that do not meet the specific criteria and standards for writing uncovered short options transactions and for maintaining written records of the reasons for every account so approved;

iv. establishment of specific minimum net equity requirements for initial approval and maintenance of Public Customer uncovered options accounts; and

v. requirements that Public Customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short options transactions, at or prior to the initial uncovered short options transaction pursuant to Section 15 of this Chapter XI (Delivery of Current Options Disclosure Documents and Prospectus).

### **Sec. 8 Supervision of Accounts**

(a) *Duty to Supervise --Non-Participant Accounts.* Every OEF shall develop and implement a written program for the review of the its non-Participant Public Customer accounts and all orders in such accounts, insofar as such accounts and orders relate to options contracts.

(b) *Duty to Supervise --Uncovered Short Options.* Every OEF shall develop and implement specific written procedures concerning the manner of supervision of Public Customer accounts maintaining uncovered short (written) options positions (which for the purposes of this Section shall include combinations and any transactions that involve naked writing) and specifically providing for frequent supervisory review of such accounts.

(c) *Senior Options Principal.* Each OEF shall designate a Senior Options Principal who is specifically identified to NASDAQ Regulation and who is an officer (in the case of a corporation) or general partner (in the case of a partnership) or manager (in the case of a limited liability company) of the OEF to supervise compliance with paragraphs (a) and (b) of this Section. In meeting his responsibility for supervision of non-Participant Public Customers' accounts and orders, the Senior Options Principal may delegate to qualified employees responsibility and authority for supervision and control of each branch office handling options transactions, provided that the Senior Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

(d) *Compliance Options Principal.* Every OEF shall designate and specifically identify to NASDAQ Regulation a Compliance Options Principal (who may be the Senior Options

Principal), who shall have no sales functions and shall be responsible to review, and to propose appropriate action to secure, the OEF's compliance with securities laws and regulations, Exchange and NOM Rules with respect to its options business.

i. The Compliance Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Options Principal is not himself the compliance officer) and to other senior management of the OEF.

ii. The requirement that the Compliance Options Principal shall have no sales functions does not apply to an OEF that has received less than \$1 million in gross commissions on options business as reflected in its Financial and Operational Combined Uniform Statement (or "FOCUS") reports for either of the preceding two (2) fiscal years or that currently has ten (10) or fewer representatives.

(e) Maintenance of Public Customer Records. Background and financial information of Public Customers who have been approved for options transactions shall be maintained at the principal supervisory office having jurisdiction over the office servicing a Public Customer's account, or shall have readily accessible and promptly retrievable, information to permit review of each Public Customer's options account on a timely basis to determine:

i. the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

ii. the size and frequency of options transactions;

iii. commission activity in the account;

iv. profit or loss in the account;

v. undue concentration in any options class or classes; and

vi. compliance with the provisions of Regulation T of the Federal Reserve Board.

### **Sec. 9 Suitability of Recommendations**

(a) Every OEF, Options Principal or representative who recommends to a Public Customer the purchase or sale (writing) of any options contract shall have reasonable grounds for believing that the recommendation is not unsuitable for such Public Customer on the basis of the information furnished by such Public Customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by such OEF, Options Principal or representative.

(b) No OEF, Options Principal or representative shall recommend to a Public Customer an opening transaction in any options contract unless the person making the

recommendation has a reasonable basis for believing at the time of making the recommendation that the Public Customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the options contract.

### **Sec. 10 Discretionary Accounts**

(a) Authorization and Approval Required. No OEF shall exercise any discretionary power with respect to trading in options contracts in a Public Customer's account unless such Public Customer has given prior written authorization and the account has been accepted in writing by an Options Principal.

i. The Senior Options Principal shall review the acceptance of each discretionary account to determine that the Options Principal accepting the account had a reasonable basis for believing that the Public Customer was able to understand and bear the risks of the strategies or transactions proposed, and the Senior Options Principal shall maintain a record of the basis for his determination.

ii. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Options Principal, provided that if the branch office manager is not an Options Principal, his approval shall be confirmed within a reasonable time by an Options Principal.

iii. Every discretionary order shall be identified as discretionary on the order at the time of its entry into NOM market.

iv. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Options Principal.

(b) Record of Transactions. A record shall be made of every options transaction for an account with respect to which an OEF is vested with any discretionary power, such record to include the name of the Public Customer, options class and series, number of contracts, premium, and date and time when such transaction took place.

(c) Excessive Transactions Prohibited. No OEF shall effect with or for any Public Customer's account with respect to which such Participant is vested with any discretionary power any transactions of purchase or sale of options contracts that are excessive in size or frequency in view of the financial resources and character of such account.

(d) Options Programs. Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the Public Customer shall be furnished with a written explanation of the nature and risks of such programs.

### **Sec. 11 Confirmation to Public Customers**

(a) Every OEF shall promptly furnish to each Public Customer a written confirmation of each transaction in options contracts that shows the underlying security, type of options, expiration month, exercise price, number of options contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.

(b) The confirmation shall, by appropriate symbols, distinguish between NOM Transactions and other transactions in options contracts.

### **Sec. 12 Statement of Accounts to Public Customers**

(a) Every OEF shall send to its Public Customers a statement of account showing security and money positions, entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations.

(b) With respect to options Public Customers having a general (margin) account, the Public Customer statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. For purposes of this paragraph (b), general (margin) account equity shall be computed by subtracting the total of the short security values and any debit balance from the total of the long security values and any credit balance.

(c) The Public Customer statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed options transactions has been included in confirmations of such transactions previously furnished to the Public Customer, and that such information will be made available to the Public Customer promptly upon request.

(d) Public Customer statements shall bear a legend requesting that the Public Customer promptly advise the Participant of any material change in the Public Customer's investment objectives or financial situation.

(e) Public Customer statements shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and at least monthly to all accounts having an entry during the preceding month.

### **Sec. 13 Statements of Financial Condition to Public Customers**

Every OEF shall send to each of its Public Customers statements of the Participant's financial condition as required by SEC Rule 17a-5 under the Exchange Act.

**Sec. 14 Addressing of Communications to Public Customers**

No OEF shall address any communications to a Public Customer in care of any other person unless either: (1) the Public Customer, within the preceding twelve (12) months, has instructed the OEF in writing to send communications in care of such other persons, or (2) duplicate copies are sent to the Public Customer at some other address designated in writing by him.

**Sec. 15 Delivery of Current Options Disclosure Documents and Prospectus**

(a) *Options Disclosure Documents.* Every OEF shall deliver a current options disclosure document issued by the OCC to each Public Customer at or prior to the time such Public Customer's account is approved for options transactions. Where a Public Customer is a broker or dealer, the OEF shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of current options disclosure documents, as requested by the broker or dealer, to enable it to comply with the requirements of this Section 15.

i. The term "current options disclosure document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Exchange Act.

ii. A copy of each amendment to an options disclosure document shall be furnished to each Public Customer who was previously furnished the options disclosure document to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such Public Customer. NASDAQ Regulation will advise OEFs when an options disclosure document is amended.

(b) The written description of risks required by this Section 15 shall be in a format prescribed by the Exchange or in a format developed by the Participant, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

(c) Below is a sample risk description for use by OEFs to satisfy the requirements of paragraph (b) of this Section 15:

***Special Statement for Uncovered Options Writers.***

*There are special risks associated with uncovered options writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all Public Customers approved for options transactions.*

*1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.*

2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered options writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid assets to meet applicable margin requirements. In this regard, if the value of the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account with little or no prior notice in accordance with the investor's margin agreement.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an options writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period. NOTE: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular, your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

## **Sec. 16 Restrictions on Pledge and Lending of Public Customers' Securities**

(a) No OEF shall lend, either to itself or to others, securities carried for the account of any Public Customer, unless such OEF shall first have obtained a separate written authorization from such Public Customer permitting the lending of the securities.

(b) Regardless of any agreement between an OEF and a Public Customer authorizing the OEF to lend or pledge such securities, no OEF shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the Public Customer to such OEF, except such lending as may be specifically authorized under paragraph (c) of this Section 16.

(c) No OEF shall lend securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be loaned in view of the indebtedness of the Public Customer, unless such OEF first obtains from such Public

Customer a separate written authorization designating the particular securities to be loaned.

(d) No OEF shall hold securities carried for the account of any Public Customer that have been fully paid for, or that are in excess of the amount that may be pledged in view of the indebtedness of the Public Customer, unless such securities are segregated and identified by a method that clearly indicates the interest of such Public Customer in those securities.

### **Sec. 17 Transactions of Certain Public Customers**

(a) No OEF shall execute any transaction in securities or carry a position in any security in which:

i. an officer or employee of the Exchange, NASDAQ Regulation, NOM or any national securities exchange that is a participant of the Clearing Corporation, or an officer or employee of a corporation in which the Exchange, or such other exchange owns the majority of the capital stock, is directly or indirectly interested, without the prior written consent of the Exchange; or

ii. a partner, officer, director, principal shareholder or employee of another OEF is directly or indirectly interested, without the consent of such other OEF.

(b) Where the required consent has been granted, duplicate reports of the transaction and position shall promptly be sent to the Exchange or OEF, as the case may be.

### **Sec. 18 Guarantees**

No OEF shall guarantee a Public Customer against loss in his account or in any transaction effected with or for such Public Customer.

### **Sec. 19 Profit Sharing**

(a) No OEF, person associated with an OEF or Options Principal shall share directly or indirectly in the profits or losses in any Public Customer's account, whether carried by such OEF, or any other OEF, without the prior written consent of the OEF carrying the account.

(b) Where such consent is obtained, the OEF, person associated with an OEF or Options Principal shall share in the profits or losses in such account only in direct proportion to the financial contribution made to the account by such person.

### **Sec. 20 Assuming Losses**

No OEF shall assume for its own account any position established for a Public Customer in a security traded on the Exchange after a loss to the Public Customer has been established or ascertained, unless the position was created by the OEF's mistake or unless approval of NASDAQ Regulation has first been obtained.

**Sec. 21 Transfer of Accounts**

Every Options Participant shall expedite the transfer of a customer's account pursuant to NASDAQ Rules IM-2110-7 and 11870.

**Sec. 22 Communications with Public Customers**

Options Participants and associated persons of Options Participants shall be bound to comply with the Communications with Public Customers rule of FINRA, as applicable, as though said rules were part of these Rules

**Sec. 23 Brokers' Blanket Bond**

(a) Every OEF approved to transact business with the public under these Rules and every Clearing Participant shall carry Brokers' Blanket Bonds covering officers and employees of the OEF in such form and in such amounts as the Exchange may require.

(b) All OEFs subject to paragraph (a) of this Section 25 shall maintain Brokers' Blanket Bonds as follows:

i. Maintain a Brokers' Blanket Bond similar to the standard form established by the Surety Association of America, covering officers and employees which provides against loss and has agreements covering at least the following:

1) Fidelity;

2) On Premises;

3) In Transit;

4) Misplacement;

5) Forgery and Alteration (including check forgery);

6) Securities Loss (including securities forgery);

7) Fraudulent Trading; and

8) A Cancellation Rider providing that the insurance carrier will promptly notify NASDAQ Regulation of cancellation, termination or substantial modification of the Bond.

ii. In determining the initial minimum coverage, the OEF is to use the highest required net capital during the twelve (12) month period immediately preceding the issuance of the Brokers' Blanket Bond. Thereafter, a review for adequacy of coverage shall be made at least annually as of the anniversary date of issuance of the subject Bond, and the

minimum requirement for the next twelve (12) months shall be established by reference to the highest net capital in the preceding twelve (12) months. Any necessary adjustments shall be made not more than thirty (30) days following the anniversary.

(c) The minimum required coverage for fraudulent trading shall be the greater of \$25,000 or fifty percent (50%) of the coverage required in paragraph (b)(ii) up to a maximum of \$500,000.

(d) The minimum required coverage for securities forgery shall be the greater of \$25,000 or twenty-five percent (25%) of the coverage required in paragraph (b)(ii) up to a maximum of \$250,000.

(e) A deductible provision of up to \$5,000 or ten percent (10%) of the minimum coverage requirement, whichever is greater, may be included in the Bond.

i. An OEF may choose to maintain coverage in excess of the minimum requirements as set forth above in paragraph (b)(ii) of this Section, and in such case, a deductible provision of up to \$5,000 or ten percent (10%) of the amount of the Blanket Bond coverage, whichever is greater, may be included in the Bond purchased. However, the excess of this greater deductible amount over the maximum permissible deductible amounts as described in this paragraph (e) must be subtracted from the OEF's net worth in the calculation of the OEF's net capital under SEC Rule 15c3-1.

ii. Each OEF shall report the cancellation, termination or substantial modification of the Bond to NASDAQ Regulation within ten (10) business days of such occurrences.

(f) OEFs with no employees shall be exempt from this Section.

(g) OEFs subject to a bonding rule of another registered national securities exchange, the SEC, or a registered national securities association that imposes requirements that are equal to or greater than the requirements imposed by this Section shall be deemed to be in compliance with the provisions of this Section.

#### **Sec. 24 Public Customer Complaints**

(a) Every OEF conducting a non-Participant Public Customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved.

(b) The term "options-related complaint" shall mean any written statement by a Public Customer or person acting on behalf of a Public Customer alleging a grievance arising out of or in connection with listed options.

(c) The central file shall be located at the principal place of business of the Participant or such other principal office as shall be designated by the OEF.

i. Each options-related complaint received by a branch office of an OEF shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office.

ii. A copy of every options-related complaint shall be maintained at the branch office that is the subject of a complaint.

(d) At a minimum, the central file shall include:

i. identification of complainant;

ii. date complaint was received;

iii. identification of the representative servicing the account, if applicable;

iv. a general description of the subject of the complaint; and

v. a record of what action, if any, has been taken by the Participant with respect to the complaint.

### **Sec. 25 Telephone Solicitation**

(a) No OEF or associated person shall make an outbound telephone call to any person's residence for the purpose of soliciting the purchase of securities or related services ("telemarketing" or "cold-calling") at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without that person's prior consent.

(b) No OEF or associated person shall make an outbound telephone call to any person for the purpose of telemarketing without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

i. the identity of the caller and the OEF firm;

ii. the telephone number or address at which the caller may be contacted; and

iii. that the purpose of the call is to solicit the purchase of securities or related services.

(c) The prohibitions of paragraphs (a) and (b) do not apply to telephone calls by an associated person of an OEF (whether acting alone or at the direction of another associated person) who controls or has been assigned to a Participant's existing Public Customer account for the purpose of maintaining and servicing that account, provided that the call is to:

i. an existing Public Customer who, within the preceding twelve (12) months, has made a securities transaction in or has deposited funds or securities into an account, that was

under the control of or assigned to that associated person at the time of the transaction or deposit;

ii. an existing Public Customer whose account has earned interest or dividend income during the preceding twelve (12) months, and who previously has made a securities transaction in or has deposited funds or securities into an account, that was under the control of or assigned to the associated person at the time of the transaction or deposit; or

iii. a broker or dealer.

(d) For purposes of paragraph (c) above, the term "existing Public Customer" means a Public Customer for whom the broker or dealer, or a clearing broker or dealer on its behalf, carries on account. The scope of this Section 25 is limited to the telemarketing calls described herein. The terms of this Section 25 do not impose, expressly or by implication, any additional requirements on Participants with respect to the relationship between a Participant and a Public Customer or between an associated person and a Public Customer.

(e) Each OEF shall make and maintain a centralized list of persons who have informed the OEF, or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on such list.

(f) Each OEF or associated person engaged in telemarketing shall have a Public Customer's express written authorization in order to obtain or submit for payment a check, draft, or other form of negotiable instrument drawn on a Public Customer's checking, savings, share or similar account. Written authorization may include the Public Customer's signature on the negotiable instrument. The authorization must be retained for at least three (3) years. This provision does not require maintenance of copies of negotiable instruments signed by Public Customers.

(g) OEFs and associated persons that engage in telemarketing also are subject to the requirements of the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers.

## **Chapter XII. Intermarket Linkage Rules**

### **Sec. 1 Definitions**

The following terms shall have the meaning specified in this Section 1 solely for the purpose of this Chapter XII:

(a) "Aggrieved Party" means a member of a Participant Exchange whose bid or offer was traded through.

(b) "Block Trade" means a trade on a Participant Exchange that:

i. involves 500 or more contracts and has a premium value of at least \$150,000;

ii. is effected at a price outside of the NBBO; and

iii. involves either:

1) a cross (where a member of the Participant Exchange represents all or a portion of both sides of the trade), or

2) any other transaction (i.e., in which such member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange. Contemporaneous transactions at the same price on a Participant Exchange shall be considered a single transaction for the purpose of this definition.

(c) "Complex Trade" means the execution of an order in an options series in conjunction with the execution of one or more related orders in different options series in the same underlying security occurring at or near the same time for the purpose of executing a particular investment strategy and for an equivalent number of contracts, provided that the number of contracts of the legs of a spread, straddle, or combination order may differ by a permissible ratio. The permissible ratio for this purpose is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00)..

(d) "Crossed Market" means a quotation in which NOM disseminates a bid (offer) in a series of an Eligible Option Class at a price that is greater than (is less than) the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(e) "Eligible Market Maker" with respect to an Eligible Options Class, means a Market Maker that:

i. is registered to, and is providing two-sided quotations in the Eligible Options Class; and

ii. is in compliance with the requirements of Section 5 of this Chapter XII.

(f) "Eligible Option Class" means all option series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on NOM and at least one other Participant Exchange.

(g) "Firm Customer Quote Size" with respect to a P/A Order means the size of the disseminated quotation of the Participant Exchange receiving the P/A Order.

(h) "Firm Principal Quote Size" means the number of option contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be 10. However, if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.

(i) "Linkage" means the systems and data communications network that link electronically the Participants Exchanges for the purposes specified in the Plan.

(j) "Linkage Order" means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

i. "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;

ii. "Principal Order" which is an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

iii. "Satisfaction Order" which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade Through.

(k) "Locked Market" means a quotation in which NOM disseminates a bid (offer) in a series of an Eligible Option Class at a price that equals the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(l) "NBBO" means the national best bid and offer in an options series as calculated by a Participant Exchange.

(m) "Non-Firm" means, with respect to quotations, that members of a Participant Exchange are relieved of their obligations to be firm for their quotations pursuant to Rule 602 of Regulation NMS under the Exchange Act.

(n) "Participant Exchange" means a registered national securities exchange that is a party to the Plan.

(o) "Plan" means the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, as such plan may be amended from time to time.

(p) "Reference Price" means the limit price attached to a Linkage Order by the sending Participant Exchange. Except with respect to a Satisfaction Order, the Reference Price is equal to the bid disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to sell and the offer disseminated by the receiving Participant Exchange at the time that the Linkage Order is transmitted in the case of a Linkage Order to buy. With respect to a Satisfaction Order, the Reference Price is the bid or offer price reflecting order(s) of Public Customers disseminated by the sending Participant Exchange that was traded through, except in the case of a Trade-Through that is a Block Trade, in which case the Reference Price shall be the price of the Block Trade that caused the Trade-Through.

(q) "Trade-Through" means a transaction in an options series at a price that is inferior to the NBBO, but shall not include a transaction that occurs at a price one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange's bid (offer) that represents the NBBO.

(r) "Third Participating Market Center Trade-Through" means a Trade-Through in a series of an Eligible Option Class that is effected by executing a Linkage Order, and such execution results in a sale (purchase) at a price that is inferior to the best bid (offer) being disseminated by another Participant Exchange.

(s) "Verifiable Number of Customer Contracts" means the number of Public Customer contracts in the book of a Participant Exchange.

## **Sec. 2 Operation of the Linkage**

By subscribing to the Plan, NASDAQ has agreed to comply with, and enforce compliance by NOM Options Participants with, the Plan. In this regard, the following shall apply:

(a) Pricing. Market Makers may send P/A Orders or Principal Orders through the Linkage only if such orders are priced at the NBBO.

(b) Non-firm markets

i. Transmission of Principal Orders When NOM is Disseminating Non-Firm Quotations. Whenever and so long as NOM is disseminating Non-Firm Quotations in an Eligible Options Class, no market maker may transmit a Principal Order with respect to such Eligible Option Class through the Linkage

ii. Transmission of Linkage Orders to Another Participant Exchange Disseminating Non-Firm Quotations. A market maker shall not send a Principal Order or P/A Order in an

Eligible Option Class to a Participant Exchange whose quotations in such class are Non-Firm.

(c) P/A Orders

i. Sending of P/A Orders for Sizes No Larger than the Firm Customer Quote Size. A Market Maker may send through the Linkage a P/A Order that is equal to or less than the size of the Firm Customer Quote Size for automatic execution, if available.

ii. Sending of P/A Orders Larger than the Firm Customer Quote Size. If the size of a P/A Order is larger than the Firm Customer Quote Size, a Market Maker may send through the Linkage such P/A Order in one of two ways:

1) The Market Maker may send a P/A Order representing the entire Public Customer order. If a receiving Participant Exchange disseminated quotation is equal to or better than the Reference Price when the P/A Order arrives at that market, that Exchange will execute the P/A Order at its disseminated quotation for at least the Firm Customer Quote Size (an automatic execution, is not required if the P/A Order is larger than the Firm Customer Quote Size). Within 3 seconds of receipt of such order, the receiving Participant Exchange will inform the Market Maker of the amount of the order executed and the amount, if any, that was canceled.

2) Alternatively, the Market Maker may send an initial P/A Order for the Firm Customer Quote Size pursuant to subparagraph (c)(i) above. If one or more of the Participant Exchanges that executed the P/A Order continues to disseminate the same quotation at the NBBO after reporting the execution of the initial P/A Order, the Market Maker may send an additional P/A Order to such Participant Exchanges. If sent, such additional P/A Order must be for at least the lesser of:

. the size of the disseminated quotation;

. 100 contracts; or

. the entire remainder of the Public Customer order.

If the sending Participant Exchange initially sent P/A Orders to more than one Participant Exchange for up to the Firm Customer Quote Size, the sending Participant Exchange may send additional P/A Orders to the same Participant Exchanges as long as such orders are, in the aggregate, for at least the lesser of 100 contracts or the entire remainder of the Customer Order; provided that the sending Participant Exchange may limit the size of any single additional P/A Order to the size of the Participant Exchange's currently-disseminated quotation. In any situation where a receiving Participant Exchange does not execute a P/A order in full, such exchange is required to move its quotation to a price inferior to the Reference Price of the P/A Order.

(d) Principal Orders.

i. *Sending of an initial Principal Order.* An Eligible Market Maker may send a Principal Order through the Linkage at a price equal to the NBBO. Subject to the next paragraph, if the Principal Order is not larger than the Firm Principal Quotation Size, the receiving Participant Exchange will execute the Principal Order in its automatic execution system, if available, if its disseminated quotation is equal to or better than the price specified in the Principal Order when that order arrives at the receiving Participant Exchange. If the Principal Order is larger than the Firm Principal Quotation Size, the receiving Participant Exchange will (1) execute the Principal Order at its disseminated quotation for at least the Firm Principal Quote Size and (2) within 3 seconds of receipt of such order, reply to the sending Participant Exchange, informing such Participant Exchange of the amount of the order that was executed and the amount, if any, canceled. If the receiving Participant Exchange does not execute the Principal Order in full, it will move its quote to a price inferior to the Reference Price of the Principal Order.

ii. *Receipt of Multiple Principal Orders.* Once NOM provides an automatic execution of a Principal Order in a series of an Eligible Option Class (the "initial execution"), NOM may reject any Principal Order(s) in the same Eligible Option Class sent by the same Participant Exchange for 15 seconds after the initial execution unless: (1) there is a change of price in NOM's disseminated offer (bid) in the series of the Eligible Option Class in which there was the initial execution; and (2) such price continues to be the NBBO. After this 15 second period, and until the sooner of (a) one minute after the initial execution or (b) a change in the NOM disseminated bid (offer), NOM is not obligated to provide an automatic execution for any Principal Orders in the same Eligible Option Class received from the Participant Exchange that sent the order resulting in the initial execution, and thus may treat any such Principal Orders as being greater than the Firm Principal Quote Size.

(e) *Responses to Linkage Orders.*

i. *Failure to receive a timely response.* A Market Maker who does not receive a response to a P order or a P/A order within 3 seconds of sending the order, may reject any response received thereafter purporting to report an execution of all or part of that order. The Market Maker so rejecting the response shall inform the Participant Exchange sending that response of the rejection within 3 seconds of receipt of the response.

ii. *Failure to send a timely response.* If a Market Maker responds to a P order or P/A order more than 3 seconds after receipt of that order, and the Participant Exchange to whom the Market Maker responded cancels such response, the Market Maker shall cancel any trade resulting from such order and shall report the cancellation to OPRA.

(f) *Receipt of Linkage Orders.* NOM will provide for the Execution of P/A orders and Principal orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then-current NBBO. Subject to paragraph (c) above, if the size of a P/A order or Principal order is not larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, NOM will provide for the execution of the entire

order, and shall execute such order in its automatic execution system. If the size of a P/A order or Principal order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Market Maker must address the order within 3 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, NOM will move its disseminated quotation to a price inferior to the Reference Price.

(g) Notice and Mitigation of Damages; Compensation Limits. Other than with respect to Trade Throughs, an Options Participant who believes that a member of another Participant Exchange or such Participant Exchange's employee took an action or failed to take an action prohibited or required by the Plan, or by such other Participant Exchange's Rules adopted pursuant to the Plan, may take steps to establish and mitigate any loss the Options Participant might incur as a result of the action or inaction and shall give prompt notice of any such steps. No such Options Participant shall be entitled to compensation for any such action or inaction in excess of the amount to which the Options Participant would have been entitled had such Options Participant taken such steps promptly after the Options Participant reasonably should have known (or did know, if earlier) that the action had occurred or had failed to occur. If the close of trading on NOM occurred before such prompt action could have been taken, then the time for such prompt action shall be deemed to be the opening of the trading in the affected option series on NOM on the next day on which that option series trades on NOM.

### **Sec. 3 Order Protection**

(a) Avoidance and Satisfaction of Trade-Throughs.

i. General Provisions. Absent reasonable justification and during normal market conditions, Options Participants should not effect Trade-Throughs. Except as provided in paragraph (b) below, if an Options Participant effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and NOM receives a Satisfaction Order from an Aggrieved Party, either:

1) the Options Participant who initiated the Trade-Through shall satisfy, or cause to be satisfied, the Aggrieved Party by filling the Satisfaction Order in accordance with subparagraph (a)(ii) below; or

2) if the Options Participant elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the Options Participant obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through shall be corrected to a price at which a Trade-Through would not have occurred. If the price of the transaction is corrected, the Options Participant correcting the price shall report the corrected price to OPRA, notify the Aggrieved Party of the correction and cancel the Satisfaction Order.

ii. Price and Size. The price and size at which a Satisfaction Order shall be filled are as follows:

1) Price. A Satisfaction Order shall be filled at the Reference Price.

2) Size. An Aggrieved Party may send a Satisfaction Order up to the lesser of the size of the Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through and the size of the transaction that caused the Trade-through. Subject to subparagraph (i)(1) above and paragraph (b) below, the receiving Options Participant shall fill all Satisfaction Orders it receives in full following a Trade-Through, subject to the following limitations:

If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled with respect to all Satisfaction Orders received in connection with any one transaction that caused a Trade-through shall not exceed the size of the transaction. In that case, the receiving Options Participant shall fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange and shall cancel the remainder of such Satisfaction Order(s); and

3) Change in status of Underlying Customer Order. During the time period that a Satisfaction Order is pending at another Participant Exchange, a receiving Options Participant shall cancel such Satisfaction Order as soon as practical if (1) the order(s) for the customer contracts underlying the Satisfaction Order are filled; or

(2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order are canceled (either being a “change in status of the underlying customer order(s)”). Notwithstanding this obligation to cancel the Satisfaction Order, within 30 seconds of receipt of notification that a Participant Exchange has filled a Satisfaction Order, the Participant that sent the Satisfaction Order may reject such fill if there has been a change in status of the underlying customer order(s), provided that the status change of the customer order occurred prior to the receipt of the Satisfaction Order fill report. However, if the underlying customer order(s) has been executed against the sender of the Satisfaction Order, the Satisfaction Order full report may not be rejected.

4) Protection of Customers. Whenever paragraph (a)(i) applies, if Public Customer orders (or P/A Orders representing Public Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Public Customer order (or P/A Order) shall receive: a. the price that caused the Trade-Through; or b. the price at which the bid or offer traded through was satisfied, if it was satisfied, pursuant to subparagraph (a)(i)(1) or the adjusted price, if there was an adjustment, pursuant to subparagraph (a)(i)(2); whichever price is most beneficial to the Public Customer order. Resulting differences in prices shall be the liability of the Options Participant who initiated the Trade-Through.

(b) Exceptions to Trade-Through Liability. Paragraph (a) shall not apply under the following circumstances:

i. the Options Participant who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

ii. the Options Participant trades through the market of a Participant Exchange to which such Options Participant had sent a P/A Order or Principal Order, and within 3 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

iii. the bid or offer traded through was being disseminated from a Participant Exchange whose quotes were Non-Firm with respect to such Eligible Option Class;

iv. the Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, NOM's quotes were Non-Firm; provided, however, that, unless one of the other conditions of this paragraph (b) applies, during any such period: (1) Options Participants shall make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (2) it shall not be considered an exception to paragraph (a) if an Options Participant regularly trades through the firm quotes of another Participant Exchange during such period;

v. the bid or offer traded through was being disseminated by a Participant Exchange during a trading rotation in the Eligible Option Class;

vi. the transaction that caused the Trade-Through occurred during a trading rotation;

vii. the transaction that caused the Trade-Through was effected as a portion of a "complex trade";

viii. in the case of a Trade-Through other than a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade- Through was not received by NOM from the Aggrieved Party promptly following the Trade-Through and, in any event, (1) except in the final five minutes of trading, within three minutes from the time the report of the transaction(s) that constituted the Trade-Through was disseminated over OPRA, and (2) in the final five minutes of trading, within one minute from the time the report of the transaction(s) that constituted the Trade- Through was disseminated over OPRA; or

ix. in the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the Exchange that initiated the Trade-Through promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange that executed the Linkage Transaction a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the

Trade-Through, the Options Participant receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send the Participant Exchange that initiated the Trade-Through a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders. i. When a Satisfaction Order is received by the Options Participant who initiated the Trade-Through, that Options Participant shall respond as promptly as practicable to the Aggrieved Party by either:

1) notifying the Aggrieved Party that one of the exceptions to Trade- Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

2) taking the appropriate corrective action pursuant to paragraph (a) above.

ii. If the Options Participant who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving a Satisfaction Order, and the Exchange determines that:

1) there was a Trade-Through; and

2) none of the exceptions to Trade-Through liability specified in paragraph (b) above were applicable; then, subject to the next paragraph, the Options Participant who initiated the Trade-Through shall be liable to an Aggrieved Party for the amount of the actual loss resulting from non-compliance with paragraph (a) and caused by the Trade-Through. If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or in the event it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Participant Exchange that initiated the Trade-Through of the amount of such loss within one minute of establishing the loss, then the liability shall be the lesser of: the actual loss; or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade- Through at the "mitigation price." The "mitigation price" is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through) in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the mitigation price shall be the price established at the opening of trading in that series on the Aggrieved Party's Participant

Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the mitigation price shall be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the last four minutes of trading, the mitigation price shall be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the Linkage Transaction that resulted in the Trade-Through.

iii. An Options Participant that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability must take steps to establish and mitigate any loss such Options Participant might incur as a result of the Trade-Through of the Options Participant's bid or offer. In addition, the Options Participant shall give prompt notice to the other Participant Exchange of any such action in accordance with subparagraph (c) (ii) above.

(d) Limitations on Trade-Throughs. Options Participants may not engage in a pattern or practice of trading through better prices available on other Exchanges, whether or not the Exchange or Exchanges whose quotations are traded through are Participant Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

i. The Exchange will consider there to have been a Trade-Through if an Options Participant executes a trade at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to paragraph (a) (i);

ii. The Exchange will not consider there to have been a Trade Through if an Options Participant executes a Block Trade at a price inferior to the NBBO if such Options Participant satisfied all Aggrieved Parties pursuant to paragraph (a)(ii) following the execution of the Block Trade; and

iii. The Exchange will not consider there to have been a Trade-Through if an Options Participant executes a trade at a price inferior to the quotation being disseminated by an Exchange that is not a Participant Exchange if the Options Participant made a good faith effort to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A "good faith effort" to reach a non- Participant Exchange's quotation requires that an Options Participant at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 602 of Regulation NMS under the Exchange Act, and such non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the Options Participant's order within 3 seconds of receipt of that order.

(e) Removal of Unreliable Quotes. Under circumstances where NOM determines that bids and offers from one or more particular away markets in one or more classes of options are not reliable, NASDAQ may exclude the unreliable bids and offers from the determination of the NBBO in the particular class(es).

i. NOM may determine bids and offers in one or more particular options classes in an away market to be unreliable under any of the following circumstances:

1) Quotes Not Firm: An away market's bids and offers in one or more particular series are not firm based upon direct communication to NOM from the away market or the dissemination through OPRA of a message indicating that disseminated bids and offers are not firm; or

2) Confirmed Quote Problems: An away market has directly communicated to NOM or otherwise confirmed that the away market is experiencing systems or other problems affecting the reliability of its disseminated bids and offers; or

3) Withdrawal From Linkage: An away market has ceased to accept orders through Linkage.

ii. In order to determine unreliability pursuant to subsection (e) (i) the procedures below must be followed.

1) Except in circumstances in which NOM has received a message from OPRA, the OLA Administrator or the relevant away market, NOM shall contact the away market to confirm their bids and offers are unreliable.

2) Once NOM learns an away market's bids and offers in one or more particular options classes are unreliable through either: a) receipt of a message from an away market, OPRA, or the OLA Administrator stating the away market's bids and offers are unreliable; or b) receipt of confirmation of such unreliability by contacting the away market, NASDAQ may declare that the away market's bids and offers in one or more particular options series are unreliable.

iii. If NASDAQ has declared that an away market's bids and offers are unreliable pursuant to subsection (i) above:

1) NOM will exclude the unreliable bids and offers from the determination of the NBBO.

2) NOM must promptly notify the affected away market when one or more of its bids and offers have been removed from the NBBO determination.

3) NOM will continue to monitor the reliability of the excluded bids and offers and must include the away market's bids and offers in the determination of the NBBO when the bids and offers are confirmed to be reliable again. Any determination to exclude unreliable bids and offers from the determination of the NBBO will expire at the end of

the trading day or when the bids and offers are confirmed to be reliable again, whichever occurs first.

iv. NOM Operations must log the following items whenever one or more bids and offers in a class is excluded from the NBBO:

1. Market whose bids and offers are being excluded;
2. Particular options class being excluded;
3. Message received or log of contact with away market confirming bid and offer unreliability, including name of NOM personnel and away market personnel;
4. Name of NASDAQ official declaring the away market's bids and offers unreliable;
5. Date and Time unreliable bids and offers excluded;
6. Time unreliable bids and offers restored if not at end of trading day; and
7. Reason bids and offers are being excluded.

#### **Sec. 4 Locked and Crossed Markets**

(a) Eligible Market Maker locking or crossing a market. An Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock or uncross that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker crossed (locked);

(b) Options Participants other than an Eligible Market Maker Locking or Crossing a Market. An Options Participant other than an Eligible Market Maker that creates a locked or crossed market shall unlock (uncross) that market.

(c) Exception. The provisions of paragraphs (a) and (b) of this rule do not apply to situations where an Options Participant books an order on the Exchange that would lock a market and contemporaneously sends through the Linkage a P/A or Principal Order for the full size of the bid or offer that was locked.

#### **Sec. 5 Limitation on Principal Order Access**

(a) A NOM Eligible Market Maker may not send a P order to a Participant Exchange unless he is posting on the NOM Book a bid and an offer for at least ten contracts on either side and with a spread between the bid and offer prices equal to or less than that provided for in the Market Maker obligations.

(b) Additionally, A Market Maker shall not be permitted to send Principal Orders in an Eligible Option Class through the Linkage for a given calendar quarter if the market

maker effected less than 80 percent of its volume in that Eligible Option Class on the Exchange in the previous calendar quarter (that is, the market maker effected 20 percent or more of its volume by sending Principal Orders through the Linkage). This provision only applies to Market Makers for each Eligible Option Class in which a Market Maker has total contract volume of at least 1,000 contracts in the previous calendar quarter. This 80/20 is represented as follows:

X

X+Y

"X" equals the total contract volume the Market Maker effects in an Eligible Option Class against orders of Public Customers on the Exchange during a calendar quarter (a) including contract volume effected by executing P/A orders sent to the Exchange through the Linkage but (b) excluding contract volume effected by sending P/A orders through the Linkage for execution on another Participant Exchange. "Y" equals the total contract volume the market maker effects in such Eligible Option Class by sending Principal Orders through the Linkage during that calendar quarter.

#### **Sec. 6 Liability for the Options Market Linkage**

(a) The Linkage as used to send orders and other information to or from NOM is a facility or service afforded by NOM. It is the responsibility of each Participant to verify the accuracy of transactions sent and received through the Linkage.

(b) The OCC, its affiliates, officers, directors, shareholders, agents and employees, shall not be liable to Participants for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades or otherwise.

## **Chapter XIII Margin Requirements**

### **Sec. 1 General Rule**

No Participant or associated person may effect a transaction or carry an account for a Customer, whether a Participant or non- Participant of NOM, without proper and adequate margin in accordance with this Chapter XIII and Regulation T.

### **Sec. 2 Time Margin Must be Obtained**

The amount of margin required by this Chapter XIII shall be obtained as promptly as possible and in any event within a reasonable time.

### **Sec. 3 Margin Requirements**

(a) A Participant or associated person must be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange ("CBOE") or the New York Stock Exchange ("NYSE") as the same may be in effect from time to time.

b) Such election shall be made in writing by a notice filed with NASDAQ Regulation.

(c) Upon the filing of such election, a Participant or associated person shall be bound to comply with the margin rules of the CBOE or the NYSE, as applicable, as though said rules were part of these Rules.

### **Sec. 4 Margin Required is Minimum**

(a) The amount of margin prescribed by these Rules is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby: but nothing in these Rules shall be construed to prevent a Participant or associated person from requiring margin in an amount greater than that specified.

(b) NOM may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

### **Sec. 5 Joint Back Office Participants**

(a) *Requirements for Joint Back Office Participants.* Every Participant or associated person that maintains a joint back office ("JBO") arrangement with a clearing broker-dealer subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System that is not an NYSE member and that has elected instead to be bound by CBOE margin requirements shall comply with the requirements prescribed below:

i. Each JBO participant must be registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 and subject to the capital requirements prescribed by Rule 15c3-1 therein; and shall not be eligible to operate under the provisions of SEC Rule 15c3-1(b)(i).

ii. Each JBO participant must meet and maintain a minimum account equity requirement of \$1,000,000 with each clearing broker-dealer where a JBO account is carried. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Chapter XIII of these Rules.

iii. Each JBO participant must meet and maintain the ownership standards established by the clearing broker-dealer; and

iv. Each JBO participant must employ (or have access to) a qualified Series 27 principal.

(b) Requirements for Clearing Participants Carrying the Accounts of JBO Participants. Every Clearing Participant carrying JBO accounts in accordance with Regulation T, Section 220.7 of the Federal Reserve Board is subject to the requirements outlined below:

i. Each Participant which carries JBO accounts shall not allow its (a) tentative net capital to fall below \$25 million; or in the alternative its (b) net capital to fall below \$7 million for a period in excess of three (3) consecutive business days, provided that the broker-dealer has as its primary business the clearance of options market maker accounts and provided that at least 60% of the sum of gross haircuts calculated for all options market maker and JBO participant accounts, without regard to related account equity or clearing firm net capital charges, is attributable to options market maker transactions. In addition, the firm operating pursuant to (b) must include the gross deductions calculated for all JBO participant accounts in the clearing firm's ratio of gross options market maker deductions to adjusted net capital in accordance with the provisions of SEC Rule 15c3-1.

ii. Each Participant which maintains JBO accounts shall require and maintain equity of \$1,000,000 for each participant, over all related accounts. If equity is below \$1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Chapter XIII of these Rules.

iii. Each Participant which maintains JBO accounts shall adjust its net worth daily by deducting any deficiency between a JBO Participant's account equity and the proprietary haircut calculated pursuant to SEC Rule 15c3- 1 for the positions maintained in such account.

iv. Each Participant which maintains JBO accounts shall establish and maintain written ownership standards for JBO accounts.

v. The Participant must develop risk analysis standards which are acceptable to the NASDAQ Regulation. At minimum these standards must comply with the requirements of Chapter IX, Section 6 of these Rules.

vi. Each Participant which maintains JBO accounts must notify its Designated Examining Authority ("DEA"), in writing, of its intention to carry such accounts.

vii. If at any time a Clearing Participant operating pursuant to paragraphs i(a) or (b) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing member shall immediately notify NASDAQ Regulation of such deficiency by telegraphic or facsimile notice; and be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3-1d, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

**Supplementary Material: ...**

.01 JBO participants shall not be considered self-clearing for any purpose other than the extension of credit under Chapter XIII of these Rules.

## **Chapter XIV. INDEX RULES**

### **Sec. 1 Application of Index Rules**

The Sections in this Chapter are applicable only to index options (options on indices of securities as defined below). The Sections in Chapters I through XIII are also applicable to the options provided for in this Chapter, unless such Sections are specifically replaced or are supplemented by Sections in this Chapter. Where the Sections in this Chapter indicate that particular indices or requirements with respect to particular indices will be "Specified," NOM shall file a proposed rule change with the Commission to specify such indices or requirements.

### **Sec. 2 Definitions**

(a) The term "aggregate exercise price" means the exercise price of the options contract times the index multiplier.

(b) The term "American-style index option" means an option on an industry or market index that can be exercised on any business day prior to expiration.

(c) The term "A.M.-settled index option" means an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(5) of this Chapter

(d) The term "call" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current index value times the index multiplier.

(e) The term "current index value" with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by NOM. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The "closing index value" shall be the last index value reported on a business day.

(f) The term "exercise price" means the specified price per unit at which the current index value may be purchased or sold upon the exercise of the option.

(g) The term "European-style index option" means an option on an industry or market index that can be exercised only on the last business day prior to the day it expires.

(h) The term "index multiplier" means the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

(i) The term "industry index" and "narrow-based index" mean an index designed to be representative of a particular industry or a group of related industries.

(j) The term "market index" and "broad-based index" mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

(k) The term "put" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current index value times the index multiplier.

(l) The term "reporting authority" with respect to a particular index means the institution or reporting service designated by NASDAQ as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on NOM shall be Specified (as provided in Section 1 of this Chapter) in the Supplementary Material to this Section 2.

(m) The term "underlying security" or "underlying securities" with respect to an index options contract means any of the securities that are the basis for the calculation of the index.

### **Supplementary Material to Section 2**

01. The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided below.

#### **Index Reporting Authority**

NASDAQ 100 Index The NASDAQ Stock Market

Mini NASDAQ 100 Index The NASDAQ Stock Market

### **Sec. 3 Designation of a Broad-Based Index**

(a) The component securities of an index underlying a broad-based index option contract need not meet the requirements of Section 3 of Chapter IV of these Rules (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a broad-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) NOM may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934, if each of the following conditions is satisfied:

(1) The index is broad-based, as defined in Section 2(j) of this Chapter;

(2) Options on the index are designated as A.M.-settled;

(3) The index is capitalization-weighted, modified capitalization weighted, price-weighted, or equal dollar-weighted;

- (4) The index consists of 50 or more component securities;
- (5) Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market capitalization of at least \$75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least \$100 million;
- (6) Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Section 3 of Chapter IV applicable to individual underlying securities;
- (7) Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;
- (8) No single component security accounts for more than ten percent (10%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than thirty-three percent (33%) of the weight of the index;
- (9) Each component security must be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act;
- (10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;
- (11) The current index value is widely disseminated at least once every fifteen (15) seconds by OPRA, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on NOM;
- (12) NOM reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of NOM’s current ISCA allocation and the number of new messages per second expected to be generated by options on such index;
- (13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;
- (14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;
- (15) NOM has written surveillance procedures in place with respect to surveillance of trading of options on the index.

(c) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (b) above:

(1) The requirements set forth in subparagraphs (b)(1) – (b)(3) and (b)(9) – (b)(15) must continue to be satisfied. The requirements set forth in subparagraphs (b)(5) – (b)(8) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the SEC under Section 19(b)(2) of the Exchange Act.

#### **Sec. 4 Dissemination of Information**

(a) NOM shall disseminate, or shall assure that the current index value is disseminated, after the close of business and from time-to-time on days on which transactions in index options are made on NOM.

(b) NOM shall maintain, or shall assure that the current index value is maintained in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

#### **Sec. 5 Position Limits for Broad-Based Index Options**

(a) Options Participants shall comply with the applicable rules of the Chicago Board Options Exchange with respect to position limits for broad-based index options or with the applicable rules of NOM for broad-based index options traded on NOM but not traded on the Chicago Board Options Exchange

(b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.

(c) Positions in reduced-value index options shall be aggregated with positions in full-value indices. For such purposes, ten reduced-value contracts shall equal one contract.

#### **Section 6 Designation of Narrow-Based and Micro-Narrow-Based Index Options**

(a) The component securities of an index underlying a narrow-based index option contract need not meet the requirements of Section 3 of Chapter IV of these Rules (Criteria for Underlying Securities). Except as set forth in subparagraph (b) below, the listing of a class of index options on a narrow-based index requires the filing of a proposed rule change to be approved by the SEC under Section 19(b) of the Exchange Act.

(b) *Narrow-Based Index*. NOM may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the 1934 Act, if each of the following conditions is satisfied:

- (1) The options are designated as A.M.-settled index options;
- (2) The index is capitalization-weighted, price-weighted, equal dollar-weighted, or modified capitalization-weighted, and consists of ten or more component securities;
- (3) Each component security has a market capitalization of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market capitalization is at least \$50 million;
- (4) Trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months;
- (5) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average monthly trading volume of at least 2,000,000 shares over the past six months;
- (6) No single component security represents more than 30% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% (65% for an index consisting of fewer than 25 component securities) of the weight of the index;
- (7) Component securities that account for at least 90% of the weight of the index and at least 80% of the total number of component securities in the index satisfy the requirements of Chapter IV, Section 3 applicable to individual underlying securities;
- (8) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934.
- (9) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index;
- (10) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange;

(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter; and

(12) If an underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected a "Chinese Wall" around its personnel who have access to information concerning changes in and adjustments to the index.

(c) Maintenance Criteria. The following maintenance listing standards shall apply to each class of index options originally listed pursuant to subsection (b) above:

(1) The requirements stated in subsections (b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) must continue to be satisfied, provided that the requirements stated in subparagraph (b)(6) must be satisfied only as of the first day of January and July in each year;

(2) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities;

(3) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;

(4) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months.

In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

(d) Notwithstanding paragraph (a) above, NOM may trade options on a Micro Narrow-Based security index pursuant to Rule 19b-4(e) of the 1934 Act, if each of the following condition is satisfied:

(1) The Index is a security index:

(i) that has 9 or fewer component securities; or

(ii) in which a component security comprises more than 30 percent of the index's weighting; or

(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000) except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(2) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, share weighted, equal dollar-weighted, approximate equal-dollar weighted, or modified equal-dollar weighted;

(i) For the purposes of this paragraph (d), an approximate equal-dollar weighted index is composed of one or more securities in which each component security will be weighted equally based on its market price on the index's selection date and the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion.

(ii) For the purposes of this paragraph (d), a modified equal-dollar weighted index is an index in which each underlying component represents a pre-determined weighting percentage of the entire index. Each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. A modified equal-dollar weighted index will be balanced quarterly.

(iii) For the purposes of this paragraph (d), a share-weighted index is calculated by multiplying the price of the component security by an adjustment factor. Adjustment factors are chosen to reflect the investment objective deemed appropriate by the designer of the index and will be published by the Exchange as part of the contract specifications. The value of the index is calculated by adding the weight of each component security and dividing the total by an index divisor, calculated to yield a benchmark index level as of a particular date. A share-

- weighted index is not adjusted to reflect changes in the number of outstanding shares of its components. A share-weighted Micro Narrow-Based index will not be re-balanced. If a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under Subsection (e) of this rule, NOM will restrict trading in existing option series to closing transactions and will not issue additional series for that index.
- (iv) NOM may rebalance any Micro Narrow-Based index on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the options contract on the index, outstanding contracts are unaffected by rebalancings.
- (3) Each component security in the index has a minimum market capitalization of at least \$75 million, except that each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index may have a minimum market capitalization of only \$50 million;
- (4) The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares for each of the last six months;
- (5) In a capitalization-weighted index, the lesser of: (1) the five highest weighted component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months; or (2) the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index each have had an average daily trading volume of at least 90,000 shares over the past six months;
- (6) Subject to subparagraphs (4) and (5) above, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements applicable to individual underlying securities;
- (7)
- (i) Each component security in the index is a "reported security" as defined in Rule 600 of Regulation NMS under the Exchange Act; and
- (ii) Foreign securities or ADRs that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;
- (8) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(9) An equal dollar-weighted index will be rebalanced at least once every quarter;

(10) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act; and

(12) Cash settled index options are designated as A.M.-settled options.

(e) The following maintenance listing standards shall apply to each class of index options originally listed pursuant to paragraph (d) above:

(1) The index meets the criteria of paragraph (d)(1) of this Rule;

(2) Subject to subparagraphs (9) and (10) below, the component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements of Section 3 of Chapter IV.

(3) Each component security in the index has a market capitalization of at least \$75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10% of the weight of the index may have a market capitalization of only \$50 million;

(4) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act; and

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements do not represent more than 20% of the weight of the index;

(6) The current underlying index value will be reported at least once every fifteen seconds during the time the index options are traded on NOM;

(7) If the underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has in place an information barrier around its personnel who have access to information concerning changes in and adjustments to the index;

(8) The total number of component securities in the index may not increase or decrease by more than 33 1/3% from the number of component securities in the index at the time of its initial listing;

- (9) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months;
- (10) In a capitalization-weighted index and a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months;
- (11) Each component security in the index is registered pursuant to Section 12 of the Exchange Act;
- (12) In an approximate equal-dollar weighted index, the index must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for fifty percent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of components in the index is greater than five at the time of rebalancing. NOM reserves the right to rebalance quarterly at its discretion;
- (13) In a modified equal-dollar weighted index NOM will rebalance the index quarterly;
- (14) In a share-weighted index, if a share-weighted Micro Narrow-Based Index fails to meet the maintenance listing standards under paragraph (e) of this Section NOM will not re-balance the index, will restrict trading in existing option series to closing transactions, and will not issue additional series for that index; and
- (15) In the event a class of index options listed on NOM fails to satisfy the maintenance listing standards set forth herein, NOM shall not open for trading any additional series of options of that class unless such failure is determined by NOM not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the 1934 Act.

## **Sec. 7 Position Limits for Industry and Micro-Narrow Based Index Options**

- (a) Options Participants shall comply with the applicable rules of the Chicago Board Options Exchange with respect to position limits for Industry and Micro-Narrow Based Index Options traded on NOM and also on the Chicago Board Options Exchange or with

the applicable rules of NOM for industry index options traded on NOM but not traded on the Chicago Board Options Exchange

(b) Index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index.

(c) Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-value options shall equal one (1) full-value contract.

### **Sec. 8 Exemptions from Position Limits**

An options Participant may rely upon any available exemptions from applicable position limits granted from time to time by an Options Exchange for any options contract traded on NOM provided that such Options Participant (1) provides NASDAQ Regulation with a copy of any written exemption issued by another Options Exchange or a written, description of any exemption issued by another Options Exchange other than in writing containing sufficient detail for NASDAQ Regulation to verify the validity of that exemption with the issuing Exchange, and (2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemptions with respect to their trading on NOM.

### **Sec. 9 Exercise Limits**

(a) In determining compliance with Section 9 of Chapter III of these Rules (Exercise Limits), exercise limits for index options contracts shall be equivalent to the position limits prescribed for options contracts with the nearest expiration date in Section 5 or Section 7 of this Chapter.

(b) For a market-maker granted an exemption to position limits pursuant to Section 8(c) of Chapter III of these Rules (Exemptions from Position Limits), the number of contracts that can be exercised over a five business day period shall equal the market-maker's exempted position.

(c) In determining compliance with exercise limits applicable to stock index options, options contracts on a stock index group shall not be aggregated with options contracts on an underlying stock or stocks included in such group, options contracts on one stock index group shall not be aggregated with options contracts on any other stock index group.

(d) With respect to index options contracts for which an exemption has been granted in accordance with the provisions of Section 8(a) of this Chapter, the exercise limit shall be equal to the amount of the exemption.

### **Sec. 10 Trading Sessions**

(a) Days and Hours of Business. Except as otherwise provided in this Rule or under unusual conditions as may be determined by NASDAQ Regulation, transactions in index options may be effected on NOM between the hours of 9:30 a.m. and 4:15 p.m. Eastern time. With respect to options on foreign indexes, NASDAQ Regulation shall determine the days and hours of business.

(b) To begin trading at 9:30 am, an opening shall be held in each class of index options as provided in Section 8 of Chapter VI of these Rules (Opening the Market).

(c) Instituting Halts and Suspensions. Trading on NOM in any index option shall be halted or suspended whenever trading in underlying securities whose weighted value represents more than twenty percent (20%), in the case of a broad based index, and ten percent (10%) for all other indices, of the index value is halted or suspended. NASDAQ Regulation also may halt trading in an index option when, in his or her judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(1) whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;

(2) whether the current calculation of the index derived from the current market prices of the stocks is not available;

(3) the extent to which the opening has been completed or other factors regarding the status of the opening; and

(4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

(d) Resumption of Trading Following a Halt or Suspension. Trading in options of a class or series that has been the subject of a halt or suspension by NASDAQ Regulation may resume if NASDAQ Regulation determines that the interests of a fair and orderly market are served by a resumption of trading. Among the factors to be considered in making this determination are whether the conditions that led to the halt or suspension are no longer present, and the extent to which trading is occurring in stocks underlying the index. To resume trading, an opening shall be held in each class of index options as provided in Section 8 of Chapter VI of these Rules (Opening the Market).

(e) Circuit Breakers. Section 5 of Chapter V of these Rules (Trading Halts Due to Extraordinary Market Volatility) applies to index options trading with respect to the initiation of a marketwide trading halt commonly known as a "circuit breaker."

(f) Special Provisions for Foreign Indices. When the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of

NOM, all of the provisions as described in paragraphs (c), (d) and (e) above shall not apply except for (c)(4).

(g) Pricing When Primary Market Does Not Open. When the primary market for a security underlying the current index value of an index option does not open for trading on a given day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation.

## **Sec. 11 Terms of Index Options Contracts**

### (a) General.

(1) Meaning of Premium Bids and Offers. Bids and offers shall be expressed in terms of dollars and cents per unit of the index.

(2) Exercise Prices. NOM shall determine fixed-point intervals of exercise prices for call and put options.

(3) Expiration Months. Index options contracts may expire at three (3)- month intervals or in consecutive months. NOM may list up to six (6) expiration months at any one time, but will not list index options that expire more than twelve (12) months out.

(4) "European-Style Exercise." The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), are approved for trading on NOM:

(i) NASDAQ 100 Index.

(ii) Mini NASDAQ 100 Index.

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Section 9(g) of this Chapter, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. The following A.M.-settled index options are approved for trading on NOM:

(i) NASDAQ 100 Index

(ii) Mini NASDAQ 100 Index

(b) Long-Term Index Options Series.

(1) Notwithstanding the provisions of Paragraph (a)(3), above, NOM may list long-term index options series that expire from twelve (12) to sixty (60) months from the date of issuance.

(i) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than twelve (12) months.

(ii) When a new Index long term options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

(2) Reduced-Value Long Term Options Series.

(i) Reduced-value long term options series may be approved for trading on Specified (as provided in Section 1 of this Chapter) indices.

(ii) Expiration Months. Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Section 6 of Chapter IV of these Rules (Series of Options Contracts Open for Trading), as amended by the following:

(1) The interval between strike prices will be no less than \$5.00: provided, that in the case of the following classes of index options, the interval between strike prices will be no less than \$2.50:

(i) NASDAQ 100 Index, if the strike price is less than \$200.

(ii) Mini NASDAQ 100 Index, if the strike price is less than \$200.

(2) New series of index options contracts may be added up to the fifth business day prior to expiration.

(3) When new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading. In the case of all classes of index options, the term "reasonably related to the current value of the underlying index" shall have the meaning set forth in Paragraph (c)(4) below.

(4) Notwithstanding any other provision of this paragraph (c), NOM may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on NOM. The exercise price of each series of index options opened for trading on NOM shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on NOM. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value. NOM may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision.

(d) Index Level on the Last Day of Trading. The reported level of the underlying index that is calculated by the reporting authority on the last day of trading in the underlying securities prior to expiration for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.

(e) Index Values for Settlement. The Rules of the Clearing Corporation specify that, unless the NOM Rules provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index for the day on which the index options contract is exercised in accordance with the Rules of the Clearing Corporation or, if such day is not a business day, for the most recent business day.

(f) Index Level at Expiration. With respect to any securities index on which options are traded on NOM, the source of the prices of component securities used to calculate the current index level at expiration is determined by the reporting authority for that index.

### **Sec. 12 Debit Put Spread Cash Account Transactions**

Debit put spread positions in European-style, broad-based index options traded on NOM (hereinafter "debit put spreads") may be maintained in a cash account as defined by Federal Reserve Board Regulation T Section 220.8 by a Public Customer, provided that the following procedures and criteria are met:

(a) The customer has received NASDAQ Regulation approval to maintain debit put spreads in a cash account carried by an Options Participant. A customer so approved is hereinafter referred to as a "spread exemption customer."

(b) The spread exemption customer has provided all information required on NOM approved forms and has kept such information current.

(c) The customer holds a net long position in each of the stocks of a portfolio that has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio. The debit put spread position must be carried in an account with a member of a self regulatory organization participating in the Intermarket Surveillance Group.

(d) The stock portfolio or its equivalent is composed of net long positions in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.

(e) The exemption applies to European-style broad-based index options dealt in on NOM to the extent the underlying value of such options position does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows- -the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

(f) A debit put spread in NOM-traded broad-based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the

same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least equal to the underlying aggregate index value of the long side of the debit put spread.

(g) The qualified portfolio must be maintained with either an Options Participant, another broker-dealer, a bank, or securities depository.

(h) The spread exemption customer shall agree promptly to provide NASDAQ Regulation any information requested concerning the dollar value and composition of the customer's stock portfolio, and the current debit put spread positions.

(1) The spread exemption customer shall agree to and any Options Participant carrying an account for the customer shall:

(i) comply with all NOM Rules and regulations;

(ii) liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit put spreads would thereby be rendered excessive; and

(iii) promptly notify NASDAQ Regulation of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.

(i) If any Options Participant carrying a cash account for a spread exemption customer with a debit put spread position dealt in on NOM has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the Options Participant has violated this Section 11.

(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.

### **Sec. 13 Disclaimers**

(a) Applicability of Disclaimers. The disclaimers in paragraph (b) below shall apply to the reporting authorities identified in the Supplemental Material to Section 2 of this Chapter.

(b) Disclaimer. No reporting authority, and no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a "Reporting Authority"), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes,

any opening, intraday or closing value therefore, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefore, or any data included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefore, any data included therein or relating thereto, or any options contract based thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefore, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

#### **Sec. 14 Exercise of American-style Index Options**

No Options Participant may prepare, time stamp or submit an exercise instruction for an American-style index options series if the Options Participant knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the then "net long position" of the account for which the exercise instruction is to be tendered. For purposes of this Rule: (i) the term "net long position" shall mean the net position of the account in such option at the opening of business of the day of such exercise instruction, plus the total number of such options purchased that day in opening purchase transactions up to the time of exercise, less the total number of such options sold that day in closing sale transactions up to the time of exercise; (ii) the "account" shall be the individual account of the particular customer, market-maker or "non-customer" (as that term is defined in the By-Laws of the Clearing Corporation) who wishes to exercise; and (iii) every transaction in an options series effected by a market-maker in a market-maker's account shall be deemed to be a closing transaction in respect of the market-maker's then positions in such options series. No Options Participant may adjust the designation of an "opening transaction" in any such option to a "closing transaction" except to remedy mistakes or errors made in good faith.