

NASDAQ LISTING RULES
4000 Series

This version of the 4000 series will not be operative until April 13, 2009.

4000. The Nasdaq Stock Market

4100. General

4110. Use of Nasdaq on a Test Basis

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

4120. Trading Halts

(a) Authority to Initiate Trading Halts

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

- (1) may halt trading on Nasdaq of a Nasdaq-listed security to permit the dissemination of material news; or
- (2) may halt trading on Nasdaq of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or
- (3) may halt trading on Nasdaq: (A) in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"); or (B) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. In the event that Nasdaq halts trading, Nasdaq Participants may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (c); or
- (4) may halt trading in an American Depositary Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or
- (5) may halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:
 - (A) material news;
 - (B) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300, 4400, and 4800 Series; or

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- (C) any other information which is necessary to protect investors and the public interest.
- (6) may halt trading in a security listed on Nasdaq when
- (A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and
 - (B) Nasdaq determines that such extraordinary market activity is likely to have a material effect on the market for the security; and
 - (C)
 - (i) Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq;
 - (ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange; or
 - (iii) After consultation with FINRA regarding a FINRA facility trading the security, Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.
- (7) may halt trading in a security that is the subject of an Initial Public Offering on Nasdaq.
- (8) may halt trading in an index warrant on Nasdaq whenever Nasdaq Regulation shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:
- (A) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;
 - (B) the current calculation of the index derived from the current market prices of the stocks is not available;
 - (C) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
- (9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares or Managed Fund Shares (as defined in Rule 4420) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 4420) or the index value applicable to that series

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is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. Nasdaq may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares or Managed Fund Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

- (10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Rule 4420(o), a Disclosed Portfolio) is disseminated if Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio) is not being disseminated to all market participants at the same time.

Nasdaq will maintain the trading halt until such time as Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on Nasdaq pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(b) Trading Halts for Trading of Certain Derivative Securities Products on Nasdaq Pursuant to Unlisted Trading Privileges

- (1) During Pre-Market Session. If a Derivative Securities Product begins trading on Nasdaq in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, Nasdaq may continue to trade the Derivative Securities Product for the remainder of the Pre-Market Session.
- (2) During Regular Market Session. During the Regular Market Session, if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the Derivative Securities Product, Nasdaq, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on Nasdaq.
- (3) Post-Market Session and Next Trading Day.
- (A) If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Regular Market Session, Nasdaq may trade the Derivative Securities Product in the Post-Market Session only if the listing market traded the Derivative Securities Product until the close of its regular trading session without a halt.
- (B) If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre-Market Session on the next trading day, Nasdaq shall not commence trading of the Derivative Securities Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, Nasdaq may

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resume trading in the Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the Derivative Securities Product resumes in the listing market.

- (4) Definitions. For purposes of this Rule:
- (A) "Derivative Securities Product" means a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or Trust Issued Receipts (as defined in Nasdaq Rule 4420), a series of Commodity-Related Securities (as defined in Nasdaq Rule 4630), securities representing interests in unit investment trusts or investment companies, or any other UTP Derivative Security (as defined in Rule 4421).
 - (B) "Pre-Market Session" means the trading session that begins at 7:00 a.m. and continues until 9:30 a.m.
 - (C) "Post-Market Session" means the trading session that begins at 4:00 p.m. or 4:15 p.m., and that continues until 8:00 p.m.
 - (D) "Regular Market Session" means the trading session from 9:30 am. until 4:00 p.m. or 4:15 p.m.
 - (E) "Required Value" shall mean (i) the value of any index or any commodity-related value underlying a Derivative Securities Product, (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day, (iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a "disclosed portfolio" in the case of a Derivative Securities Product that is a series of managed fund shares or actively managed exchange-traded funds for which a disclosed portfolio is disseminated.

(c) **Procedure for Initiating a Trading Halt**

- (1) Nasdaq issuers are required to notify Nasdaq of the release of certain material news prior to the release of such information to the public as required by Rules 4310(c)(16) and 4320(e)(14).
- (2) Except in emergency situations, notification shall be provided directly to Nasdaq's MarketWatch Department through Nasdaq's electronic disclosure system available at www.nasdaq.net. In emergency situations, issuers shall instead provide notification by telephone or facsimile.
- (3) Upon receipt of information, from the issuer or other source, Nasdaq will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.
- (4) Should Nasdaq determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In

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addition, Nasdaq shall disseminate notice of the commencement of a trading halt through major wire services.

- (5) Trading in a halted security shall resume at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the resumption of trading through major wire services.
- (6)
 - (A) In the case of a trading halt under Rule 4120(a)(6) based on the misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is not operated by Nasdaq, Nasdaq will promptly contact the operator of the system in question (as well as any national securities exchange or FINRA facility to which such system is linked) to ascertain information that will assist Nasdaq in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by Nasdaq, Nasdaq will continue efforts to contact the operator of the system to ascertain information that will assist Nasdaq in determining whether the trading halt should be terminated.
 - (B) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as Nasdaq determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity.
- (7)
 - (A) A trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9) or (10) or Rule 4120(b) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. At the conclusion of the 5-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for an additional 1-minute period pursuant to subparagraph (C) below. At the conclusion of the Display Only Period, trading shall immediately resume pursuant to Rule 4753.
 - (B) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only Period during which market participants may enter quotes and orders in that security in Nasdaq systems. At the conclusion of the 15-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for up to six additional 5-minute Display Only Periods pursuant to subparagraph (C) below. At the conclusion of the Display Only Period, trading shall immediately resume pursuant to Rule 4753.

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- (C) If at the end of a Display Only Period, Nasdaq detects a liquidity imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraphs (A) and (B) above. Liquidity Imbalances shall be established when (i) the Current Reference Prices, as defined in Rule 4705(a)(2), disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-043 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-050 eff. Feb. 9, 2007; amended by SR-NASDAQ-2007-016 eff. Mar. 5, 2007; amended by SR-NASDAQ-2007-073 eff. Aug. 20, 2007; amended by SR-NASDAQ-2007-029 eff. Sept. 4, 2007; amended by SR-NASDAQ-2008-039 eff. June 13, 2008; amended by SR-NASDAQ-2008-054 eff. June 13, 2008; amended by SR-NASDAQ-2008-046 eff. July 7, 2008; amended by SR-NASDAQ-2009-004 eff. January 30, 2009.

IM-4120-1. Deleted

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IM-4120-2. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4121. Market Closings

Upon SEC request (including, but not limited to, in accordance with standing SEC requests regarding market closings), Nasdaq will halt all domestic trading in both securities listed on Nasdaq and securities traded on Nasdaq pursuant to unlisted trading privileges if other major securities markets initiate marketwide trading halts in response to extraordinary market conditions.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

4200. Definitions

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

- (1) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.
- (2) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of FINRA in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); Amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-021 eff. Oct. 6, 2006; amended by SR-NASDAQ-2006-041 eff. Mar. 13, 2007; amended by SR-NASDAQ-2006-032 eff. Apr 18, 2007; amended by SR-NASDAQ-2008-037 eff. June 17, 2008; amended by SR-NASDAQ-2008-054 eff. June 13, 2008; amended by SR-NASDAQ-2008-053 eff. August 8, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

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IM-4200. Deleted

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4200-1. [Deleted]

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-033 eff. August 25, 2006.

4300. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4300-1. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-024 eff. Aug. 21, 2007; amended by SR-NASDAQ-2008-013 eff. July 25, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4300-2. Deleted

Adopted by SEC Release 34-58228 (July 25, 2008); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4305. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4310. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-032 eff. Apr. 18, 2007; amended by SR-NASDAQ-2007-094 eff. Nov. 30, 2007; amended by SR-NASDAQ-2008-017 eff. June 5, 2008; amended by SR-NASDAQ-2008-037 eff. June 17, 2008; amended by SR-NASDAQ-2009-002 eff. January 13, 2009; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4320. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-033 eff. August 25, 2006; amended by SR-NASDAQ-2006-032 eff. Apr. 18, 2007; amended by SR-NASDAQ-2007-094 eff. Nov. 30, 2007; amended by SR-NASDAQ-2007-090 eff. March 6, 2008; amended by SR-NASDAQ-2008-017 eff. June 5, 2008; amended by SR-NASDAQ-2008-037 eff. June 17, 2008; amended by SR-NASDAQ-2009-002 eff. January 13, 2009; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4330. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4340. Deleted

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4350. Deleted

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IM-4350-1. Deleted

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IM-4350-2. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4350-3. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4350-4. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4350-5. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4350-6. Deleted

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IM-4350-7. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4350-8. Deleted

Adopted by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4350-1 Deleted

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4351. Deleted

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IM-4351. Deleted

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4360. Deleted

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

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

- (1) "Nasdaq Affiliate" means The Nasdaq Stock Market, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with The Nasdaq Stock Market, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.
- (2) "Affiliate Security" means any security issued by a Nasdaq Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 5705(a)(1)(A) and Index Fund Shares as defined in Rule 5705(b)(1)(A).

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

- (1) file a report quarterly with the Commission detailing Nasdaq's monitoring of:
 - (A) the Nasdaq Affiliate's compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5300, 5400, 5500, and 5600 Series; and
 - (B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.
- (2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5300, 5400, 5500 and

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5600 Series and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

- (c) In the event that Nasdaq determines that the Nasdaq Affiliate is not in compliance with any of the listing requirements contained in the Rule 5000, 5100, 5200, 5300, 5400, 5500 and 5600 Series, Nasdaq shall file a report with the Commission within five business days of providing notice to the Nasdaq Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq Affiliate in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the Nasdaq Affiliate, Nasdaq shall notify the Commission of such receipt, whether the plan of compliance was accepted by Nasdaq or what other action was taken with respect to the plan and the time period provided to regain compliance with the Rule 5000, 5100, 5200, 5300, 5400, 5500 and 5600 Series, if any.

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4380. Deleted

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4390. Deleted

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IM-4390. Deleted

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4400. Deleted

4410. Deleted

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4420. Deleted

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4421. Deleted

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IM-4425. Deleted

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4426. Deleted

Adopted by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-020 eff. July 28, 2006; amended by SR-NASDAQ-2006-044 eff. Oct. 10, 2006; amended by SR-NASDAQ-2007-050 eff. May 10, 2007; amended by SR-NASDAQ-2008-037 eff. June 17, 2008; amended by SR-NASDAQ-2008-093 eff. December 1, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4427. Deleted

Adopted by SR-NASDAQ-2006-007 eff. May 8, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4430. Deleted

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Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4450. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-002 eff. July 18, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2007-071 eff. Dec. 5, 2007; amended by SR-NASDAQ-2008-037 eff. June 17, 2008; amended by SR-NASDAQ-2009-002 eff. January 13, 2009; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4460. Deleted

Reserved by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4470. Deleted

Reserved by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4500. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-040 eff. Jan. 30, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4500-2. Deleted

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Reserved by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4500-3. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); reserved by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4500-4. Deleted

Adopted by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4500-5. Deleted

Adopted by SR-NASDAQ-2007-040 eff. May 31, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4500-6. Deleted

Adopted by SR-NASDAQ-2007-042 eff. April 13, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4510. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-040 eff. Jan. 30, 2007; amended by SR-NASDAQ-2007-074 eff. Aug. 23, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4520. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-040 eff. Jan. 30, 2007; amended by SR-NASDAQ-2007-040 eff. May 31, 2007; amended by SR-NASDAQ-2007-074 eff. Aug. 23, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4520-1. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4530. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4540. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2008-039 eff. June 13, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4550. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-040 eff. Jan. 30, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

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4600. Requirements for Nasdaq Market Makers and Other Nasdaq Market Center Participants

4601. Scope

Unless otherwise specified, the rules set forth in this 4600 Series apply only to the quoting and trading of System securities via the Nasdaq Market Center.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4602. Reserved

Reserved

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4610. Registration and Other Requirements

4611. Nasdaq Market Center Participant Registration

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

- (1)** execution of applicable agreements with Nasdaq;
- (2)** membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which Nasdaq Market Center compared trades may be settled;
- (3)** compliance with all applicable rules and operating procedures of Nasdaq and the Commission in their use of the System;
- (4)** maintenance of the physical security of the equipment located on the premises of the Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Nasdaq Market Center;
- (5)** acceptance and settlement of each Nasdaq Market Center trade that the Nasdaq Market Center identifies as having been effected by such participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified Nasdaq Market Center trade by the clearing member on the regularly scheduled settlement date; and
- (6)** input of accurate information into the System, including, but not limited to, whether the member acted in a principal, agent, or riskless principal capacity.

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

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- (b)** Each Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm shall be under a continuing obligation to inform Nasdaq of noncompliance with any of the registration requirements set forth above.
- (c)** Nasdaq may impose upon any Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as Nasdaq may determine to be necessary to protect the integrity of Nasdaq's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm or at Nasdaq, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected Nasdaq Market Maker, Nasdaq ECN or Order Entry Firm in writing.
- (d)** Sponsored Participants. A Sponsored Participant may obtain authorized access to the Nasdaq Market Center only if such access is authorized in advance by one or more Nasdaq members as follows:

 - (1)** Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Nasdaq Market Center. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.
 - (2)** For a Sponsored Participant to obtain and maintain authorized access to the Nasdaq Market Center, a Sponsored Participant and its Sponsoring Member must agree in writing to the following Sponsorship Provisions:

 - (A)** Sponsored Participant and its Sponsoring Member must have entered into and maintained a User Agreement with The NASDAQ Stock Market LLC. The Sponsoring Member must designate the Sponsored Participant by name in its User Agreement as such.
 - (B)** Sponsoring Member acknowledges and agrees that

 - (i)** All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member and
 - (ii)** Sponsoring Member is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.
 - (C)** Sponsoring Member shall comply with the Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center and Sponsored Participant shall comply with Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center, as if Sponsored Participant were a Nasdaq Member.

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- (D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member a list of individuals authorized to obtain access to the Nasdaq Market Center on behalf of the Sponsored Participant.
 - (E) Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Nasdaq Market Center.
 - (F) Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Nasdaq Market Center.
 - (G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Nasdaq Market Center, including unauthorized entry of information into the Nasdaq Market Center, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.
 - (H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and customers' use and access to the Nasdaq Market Center for compliance with the terms of this agreement.
 - (I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member, Nasdaq, or any other third parties that arise from the Sponsored Participant's access to and use of the Nasdaq Market Center. Such amounts include, but are not limited to applicable exchange and regulatory fees.
- (3) The Sponsoring Member must provide Nasdaq with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-061 eff. Jan. 21, 2007; amended by SR-NASDAQ-2007-010 eff. Feb. 23, 2007; amended by SR-NASDAQ-2008-054 eff. June 13, 2008; amended by SR-NASDAQ-2009-014 eff. February 23, 2009.

IM-4611-1. Deleted

Adopted by SR-NASDAQ-2006-061 eff. Jan. 21, 2007; deleted by SR-NASDAQ-2007-010 eff. Feb. 23, 2007.

4612. Registration as a Nasdaq Market Maker

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4613. Character of Quotations

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

(a) Quotation Requirements and Obligations

- (1)** Two-Sided Quote Obligation. For each security in which a member is registered as a Nasdaq Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain a two-sided quotation ("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MPID") and is displayed in the Nasdaq Market Center at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.
 - (A)** A registered market maker must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 604, provided, however, that a registered Nasdaq Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares.
 - (B)** The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.
- (2)** The first MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary MPID." Market makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." A market maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Nasdaq Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. A market maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.
- (3)** Market makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two

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exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to market makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to Nasdaq Rules 4614 and 4619.

(b) Firm Quotations

- (1) All quotations and orders to buy and sell entered into the System by Nasdaq Market Makers, Nasdaq ECNs, and Nasdaq Order Entry firms are firm and automatically executable for their displayed and non-displayed size in the System.

(c) Impaired Ability to Enter or Update Quotations

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

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired and the market maker elects to remain in Nasdaq, the Nasdaq Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq Market Center.

(d) Reserved

(e) Locked and Crossed Markets

- (1) Locked and Cross Markets within the System: Any quotes or orders that are entered into the System that would lock or cross another order in the System will be executed by the System. This processing, set forth in Rule 4757, ensures that no locked or crossed markets can exist within the System and that price improvement is allocated fairly.
- (2) Inter-market Locked and Crossed Markets. Beginning March 5, 2007, the provisions of this subsection (e)(2) shall apply to the trading of securities governed by Regulation NMS.
 - (A) Definitions. For purposes of this Rule, the following definitions shall apply:
 - (i) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.
 - (ii) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower

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

- (iii) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.
- (B) Prohibition. Except for quotations that fall within the provisions of paragraph (D) of this Rule, Nasdaq members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.
- (C) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.
- (D) Exceptions.
 - (i) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.
 - (ii) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.
 - (iii) The locking or crossing quotation was an automated quotation, and the Nasdaq member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.
 - (iv) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. August 1, 2006; amended by SR-NASDAQ-2006-027 eff. Aug. 2, 2006; amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2007-005 eff. Feb. 5, 2007; amended by SR-NASDAQ-2007-069 eff. Nov. 7, 2007; amended by SR-NASDAQ-2008-004 eff. Mar. 7, 2008; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

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IM-4613. Deleted

Deleted by SR-NASDAQ-2008-004 eff. March 7, 2008. Adopted by SR-NASDAQ-2006-019 eff. July 28, 2006.

4614. Stabilizing Bids

(a) Nasdaq Market Maker Obligation/Identifier

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

(b) Eligibility

Only one Nasdaq Market Maker in a security may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids

- (1) A stabilizing bid shall not be entered in Nasdaq unless at least one other Nasdaq Market Maker in addition to the market maker entering the stabilizing bid is registered as a Nasdaq Market Maker in the security and entering quotations that are considered an independent bid under SEC Rule 104.
- (2) A stabilizing bid must be available for all freely tradable outstanding securities of the same class being offered.

(d) Submission of Request to Nasdaq

- (1) A Nasdaq Market Maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq MarketWatch for entry on Nasdaq of a one-sided bid identified as a stabilizing bid. The Nasdaq Market Maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq MarketWatch that includes the information required by subparagraph (d)(2).
- (2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq MarketWatch that shall include:
 - (A) the identity of the security and its symbol;
 - (B) the contemplated effective date of the offering and the date when the offering will be priced;
 - (C) the date and time that an identifier should be included on Nasdaq; and
 - (D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless Nasdaq determines otherwise.

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Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4615. Reserved

Reserved by SEC Release 34-53128 (Jan. 13, 2006).

4616. Reports

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4617. Normal Business Hours

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4618. Clearance and Settlement

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

(b) Notwithstanding paragraph (a), transactions may be settled "ex-clearing" provided that both parties to the transaction agree.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4619. Withdrawal of Quotations and Passive Market Making

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

(b) A Nasdaq Market Maker that wishes to obtain excused withdrawal status based on a market maker's systemic equipment problems, such as defects in a Nasdaq Market Maker's software or hardware systems or connectivity problems associated with the circuits connecting Nasdaq Market Center systems with the Nasdaq Market Maker's systems, shall contact Nasdaq Market Operations.

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Nasdaq Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Nasdaq Market Operations.

(c) (1) For Nasdaq-listed securities, excused withdrawal status based on circumstances beyond the Nasdaq Market Maker's control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by Nasdaq one business day in advance and is approved by Nasdaq. Excused withdrawal status based on vacation may be granted only if:

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

- (2)** For securities listed on exchanges other than Nasdaq, a Nasdaq Market Maker that wishes to withdraw quotations shall contact Nasdaq MarketWatch to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Market Maker's control may be granted for up to five (5) business days, unless extended by Nasdaq MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless Nasdaq has initiated a trading halt for Market Makers in the security, pursuant to Rule 4120.

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

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relationship will have their Nasdaq Market Center system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

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

- (1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq MarketWatch and the Market Regulation Department of FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.
 - (A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Nasdaq Market Maker's quotations, or that includes a request on behalf of each Nasdaq Market Maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.
 - (B) The managing underwriter shall advise each Nasdaq Market Maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq MarketWatch and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq MarketWatch as required by subparagraph (e)(2), below.
- (2) A Nasdaq Market Maker that has been identified to Nasdaq MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq MarketWatch and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.
- (3) If a Nasdaq Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit Nasdaq from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.
- (4) The quotations of a passive market maker shall be identified on Nasdaq as those of a passive market maker.

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

(f) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Nasdaq Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. August 1, 2006; amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4620. Voluntary Termination of Registration

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

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

- (1) the Nasdaq Market Maker notified MarketWatch of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;
- (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and
- (3) the Nasdaq Market Maker's firm would not exceed the following reinstatement limitations:
 - (A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;

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- (B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and
- (C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.

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

- (1) the number of accidental withdrawals by the Nasdaq Market Maker in the past, as compared with Nasdaq Market Makers making markets in a comparable number of stocks;
- (2) the similarity between the symbol of the stock that the Nasdaq Market Maker intended to withdraw from and the symbol of the stock that the Nasdaq Market Maker actually withdrew from;
- (3) market conditions at the time of the withdrawal;
- (4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and
- (5) the timeliness with which the Nasdaq Market Maker notified MarketWatch of the error.

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

- (1) the Nasdaq Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when Nasdaq's systems withdrew such a quotation;
- (2) the Nasdaq Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Nasdaq Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or
- (3) upon request from the market maker, Nasdaq MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that Nasdaq MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

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(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. August 1, 2006; amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4621. Suspension and Termination of Quotations

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4622. Termination of Nasdaq Service

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4623. Alternative Trading Systems

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

- (1) to comply with SEC Rule 301(b)(3);
- (2) to comply with the terms of the ECN display alternative provided for in SEC Rule 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"); or
- (3) to provide orders to Nasdaq voluntarily.

In providing any such means, Nasdaq shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq, and allows any Nasdaq member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

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

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

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- (2) be registered as a Nasdaq member;
- (3) enter into and comply with the terms of applicable agreements with Nasdaq;
- (4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of subscriber orders of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq, at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ATS or ECN;
- (5) provide an automatic execution of any quote or order entered into the System by the ATS or ECN.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4624. Penalty Bids and Syndicate Covering Transactions

(a) A Nasdaq Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A Nasdaq Market Maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

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

- (1) the identity of the security and its symbol;
- (2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4625. Obligation to Provide Information

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

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- (1) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, SEC rule, or provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by Nasdaq; this shall include, but not be limited to, information relating to:
- (A) a locked or crossed market; or
 - (B) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Nasdaq Rule 4120 and IM-4120-1; or
 - (C) a clearly erroneous transaction, pursuant to Nasdaq Rule 11890; or
 - (D) a request for an excused withdrawal or reinstatement, pursuant to Nasdaq Rules 4619, and 4620; or
 - (E) trade-throughs; or
 - (F) a request to submit a stabilizing bid, pursuant to Nasdaq Rule 4614, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to Nasdaq Rule 4624.
- (2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Nasdaq rule, SEC rule, provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations for which Nasdaq Market Operations is responsible; this shall include, but not be limited to, information relating to an equipment failure.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4626. Limitation of Liability

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

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center for losses directly resulting from the systems' actual failure to correctly process an

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order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.

- (1) For one or more claims made by a single market participant related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of \$100,000, or the amount of any recovery obtained by Nasdaq under any applicable insurance policy.
- (2) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center on a single trading day, Nasdaq's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.
- (3) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.
- (4) In the event all of the claims arising out of the use of the Nasdaq Market Center cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising on a single trading day, or during a single calendar month, as applicable.
- (5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Nasdaq Market Center gave rise to such claims. Nothing in this rule shall obligate Nasdaq to seek recovery under any applicable insurance policy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4627. Obligation to Honor System Trades

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

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

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4628. Compliance with Rules and Registration Requirements

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

(b)

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- (1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Rule 4611, it shall be removed from the Nasdaq Market Center until such time as a clearing arrangement is reestablished.
- (2) A Participant that is not in compliance with its obligations under paragraphs (a)(2) of Rule 4611 shall be notified when Nasdaq exercises its authority under paragraph (b)(1) above.
- (3) The authority and procedures contained in this paragraph (b) do not otherwise limit Nasdaq's authority, contained in other provisions of the Nasdaq Rules, to enforce its rules or impose any fitting sanction.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4630. Trading in Commodity-Related Securities

(a) Nasdaq will consider for trading pursuant to unlisted trading privileges, a Commodity-Related Security that meets the criteria of this Rule. Unless otherwise noted, a Commodity-Related Security approved for trading under this rule is eligible for trading during all Nasdaq market sessions if members comply with Nasdaq Rule 4631 when accepting Commodity-Related Security orders for execution in the pre-market session or post-market session.

(b) **Applicability.** This Rule is applicable only to Commodity-Related Securities. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of all other Nasdaq Rules shall be applicable to the trading on Nasdaq of such securities. Commodity-Related Securities are included within the definition of "security" or "securities" as such terms are used in the Nasdaq Rules.

(c) **Definitions.** The following terms shall, unless the context otherwise requires, have the meaning herein specified:

- (1) *Commodity-Related Security.* The term "Commodity-Related Security" means a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives.
- (2) *Commodity.* The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(d) **Information Barriers.** A member acting as a registered market maker in a Commodity-Related Security is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the "minimum elements of adequate Chinese Wall policy and procedures." For purposes of a Commodity-Related Security only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

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(e) Market Maker Accounts. A member acting as a registered market maker in a Commodity-Related Security must file with Nasdaq Regulation in a manner prescribed by Nasdaq Regulation and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. No market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by this Rule. A member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(f) The member acting as a registered market maker in a Commodity-Related Security shall make available to Nasdaq Regulation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by Nasdaq Regulation.

(g) In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(h) Nasdaq requires that members provide all purchasers of a newly issued Commodity-Related Security a prospectus for such Commodity-Related Security.

Adopted by SR-NASDAQ-2006-009 eff. Nov. 16, 2006; amended by SR-NASDAQ-2007-016 eff. Mar. 5, 2007; amended by SR-NASDAQ-2007-098 eff. Dec. 18, 2007; amended by SR-NASDAQ-2009-004 eff. January 30, 2009.

4631. Customer Disclosures

No member may accept an order from a customer for execution in the premarket session or post-market session without disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products.

The disclosures required pursuant to this rule may take the following form or such other form as provides substantially similar information:

- (1) Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell

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securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

- (2) Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.
- (3) Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.
- (4) Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.
- (5) Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.
- (6) Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.
- (7) Risk of Lack of Calculation or Dissemination of Underlying Index Value or Intraday Indicative Value ("IIV"). For certain Derivative Securities Products, an updated underlying index value or IIV may not be calculated or publicly disseminated in extended trading hours. Since the underlying index value and IIV are not calculated or widely disseminated during the pre-market and post-market sessions an investor who is unable to calculate implied values for certain Derivative Securities Products in those sessions may be at a disadvantage to market professionals.

Adopted by SR-NASDAQ-2007-098 eff. Dec. 18, 2007; amended by SR-NASDAQ-2008-006 eff. Jan. 17, 2008.

4700. Nasdaq Market Center — Execution Services

4701. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-007 eff. May 8, 2006; amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

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4703. Reserved

Reserved

Adopted by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4704. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4705. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4706. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4707. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4708. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4709. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4710. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

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4711. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4712. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4713. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4714. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4715. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4719. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4720. Reserved

Reserved

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4750. Nasdaq Market Center-Execution Services

4751. Definitions

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

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

- (1)** an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;
- (2)** a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the National Trade Reporting System, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment;
- (3)** a data feed(s) that can be used to display with attribution to Participants' MPIDs all Quotes and Displayed Orders on both the bid and offer side of the market for all price levels then within the Nasdaq Market Center.

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

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

- (1)** "Nasdaq ECNs," members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more System Securities.
- (2)** "Nasdaq Market Makers," members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities.
- (3)** "Order Entry Firms," members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623.

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

- (1)** The term "Quote" shall mean a single bid or offer quotation submitted to the System and designated for display (price and size) next to the Participant's MPID by a Participant that is eligible to submit such quotations.
- (2)** The term "Automatic Quote Refresh" shall mean the default price increment away from the executed price and the size to which a Participant's Quote will be refreshed if the Participant elects to utilize this functionality. If the Participant does not designate an Automatic Quote Refresh size, which must be at least one normal unit of trading, the default Automatic Quote Refresh size shall be 100 shares and the default Automatic Quote Refresh price increment shall be \$0.25.

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- (3) The term "Reserve Size" shall mean the System-provided functionality that permits a Participant to display in its Displayed Quote part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis. Both the displayed and non-displayed portions are available for potential execution against incoming orders. If the Displayed Quote is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.
- (e) The term "Order" shall mean a single order or multiple orders at the same price submitted to the System by a Participant that is eligible to submit such orders and shall include:
- (1) "Attributable Orders," orders that are designated for display (price and size) next to the Participant's MPID;
 - (2) "Non-Attributable Orders," orders that are entered by a Participant that is designated for display (price and size) on an anonymous basis in the order display service of the System; and
 - (3) "Non-Displayed Orders," a limit order that is not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.
- (f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:
- (1) "Discretionary Orders" are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the cancellation of the open shares of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.
 - (2) "Reserve Orders" are limit orders that have both a round-lot displayed size as well as an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

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- (3) "Limit Orders" are orders to buy or sell a stock at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.
- (4) "Pegged Orders" are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the Nasdaq Market Center inside bid or offer or bids or offers in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market ("Primary Peg"), the opposite side of the market ("Market Peg"), or the midpoint of the national best bid and offer ("Midpoint Peg"). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, the Primary Peg and Market Peg Orders may also establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.
- (5) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel or Market Hours Immediate or Cancel. Minimum Quantity Orders with a Market Hours Immediate or Cancel time in force received prior to the opening cross or after 4 p.m. will be rejected.
- (6) "Intermarket Sweep Order" or "ISO" are limit orders that are designated as ISOs in the manner prescribed by Nasdaq and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act. ISOs are immediately executable within the System pursuant to Rule 4757 and shall not be eligible for routing as set out in Rule 4758.

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

- (7) "Price to Comply Order" are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing NBBO.

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(8) "Price to Comply Post Order" are orders that, if, at the time of entry, a Price to Comply Post Order would create a violation of Rule 610(d) of Regulation NMS under the Act by locking or crossing the protected quotation of an external market or would cause a violation of Rule 611 of Regulation NMS under the Act, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or to one penny above the current best bid (for offers). Price to Comply Post Orders will not be routed outside of the System.

(9) "Directed Orders" are orders that are directed to an exchange other than Nasdaq as directed by the entering party without checking the Nasdaq book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This option may only be used for orders with time-in-force parameters of IOC.

Directed Orders may be designated as intermarket sweep orders by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act). A broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq except for Directed Orders directed to the NASDAQ OMX BX Equities Market.

(10) "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).

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

- (1)** "normal unit of trading": the round lot size for the security.
- (2)** "mixed lot": an order that is for more than a normal unit of trading but not a multiple thereof.
- (3)** "odd-lot": an order that is for less than a normal unit of trading.

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

- (1)** "System Hours Immediate or Cancel" or "SIOC" shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant. SIOC Orders shall be available for entry and execution from 7:00 a.m. until 8:00 p.m. Eastern Time.
- (2)** "System Hours Day" or "SDAY" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution from 7:00 a.m.

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until 8:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party.

- (3) "System Hours Good-till-Cancelled" or "SGTC" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution from 7:00 a.m. until 8:00 p.m. Eastern Time unless cancelled by the entering party, or until 1 year after entry, whichever comes first.
- (4) "System Hours Expire Time" or "SHEX" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant unless canceled by the entering party. SHEX Orders shall be available for entry and execution from 7:00 a.m. until 8:00 p.m. Eastern Time.
- (5) "Market Hours IOC" or "MIOC" shall mean for orders so designated, that if after entry into the System a marketable limit order for unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. MIOC Orders shall be available for entry from 7:00 a.m. until 4:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time. MIOC Orders entered between 7:00 a.m. and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.
- (6) "Market Hours Day" or "MDAY" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until 4:00 p.m. Eastern Time, unless canceled by the entering party, after which it shall be returned to the entering party. MDAY Orders shall be available for entry from 7:00 a.m. until 4:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time.
- (7) "Market Hours GTC" or "MGTC" shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until 1 year after entry, whichever comes first. MGTC Orders shall be available for entry from 7:00 a.m. until 8:00 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4:00 p.m. Eastern Time.
- (8) "Good-til-market close" or "GTMC" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until the completion of the Nasdaq Closing Cross, after which it shall be returned to the entering party. GTMC orders shall be available for entry and potential execution from 7:00 a.m. and 8:00 p.m. Eastern Time. GTMC orders entered after the Nasdaq Closing Cross will be treated as SIOC orders.

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

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Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-027 eff Aug. 2, 2006; amended by SR-NASDAQ-2006-043 eff Oct. 10, 2006; amended by SR-NASDAQ-2006-058 eff. Dec. 15, 2006; amended by SR-NASDAQ-2007-005 eff. Feb. 5, 2007; amended by SR-NASDAQ-2007-020 eff. Mar. 5, 2007; amended by SR-NASDAQ-2008-021 eff. Mar. 19, 2008; amended by SR-NASDAQ-2008-049 eff. June 2, 2008; amended by SR-NASDAQ-2008-054 eff. June 13, 2008; amended by SR-NASDAQ-2008-061 eff. July 9, 2008; amended by SR-NASDAQ-2008-098 eff. December 23, 2008; amended by SR-NASDAQ-2009-006 eff. January 28, 2009.

4752. Opening Process

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

- (1)** "Imbalance" shall mean the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, Open Eligible Interest or OIO order shares at a particular price at any given time.
- (2)** "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOO, LOO, OIO, and Early Market Hours orders and the price at which those orders would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:
 - (A)** "Current Reference Price" shall mean:
 - (i)** The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO. Open Eligible Interest and Early Market Hours orders can be paired.
 - (ii)** If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.
 - (iii)** If more than one price exists under subparagraph (ii). the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.
 - (iv)** If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.
 - (B)** the number of shares represented by MOO, LOO, OIO, Early Market Hours orders, and Open Eligible Interest that are paired at the Current Reference Price;
 - (C)** the size of any Imbalance;
 - (D)** the buy/sell direction of any Imbalance; and
 - (E)** indicative prices at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent by which the

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indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

- (i) "Near Clearing Price" which shall mean the price at which both the MOO, LOO, OIO, and Early Market Hours orders and Open Eligible Interest in the Nasdaq Market Center would execute, and
 - (ii) "Far Clearing Price" which shall mean the price at which the MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Book would execute.
 - (iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for "market buy" or "market sell".
- (3) "Limit On Open Order" or "LOO" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Opening Cross. LOO orders shall execute only at the price determined by the Nasdaq Opening Cross and shall be available for automatic execution. LOO orders may be entered, cancelled and cancel/replaced between 7:00 a.m. and 9:28 a.m. without restriction. LOO orders may not be cancelled or corrected after 9:28 a.m.
- (4) "Market on Open Order" or "MOO" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Opening Cross. MOO orders may be entered, cancelled, and cancel/replaced between 7:00 a.m. and 9:28 a.m. and shall execute only at the price determined by the Nasdaq Opening Cross.
- (5) "Nasdaq Opening Cross" shall mean the process for determining the price at which orders shall be executed at the open and for executing those orders.
- (6) "Opening Imbalance Only Order" or "OIO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Opening Cross and only against MOO, LOO or Early Market Hours orders. OIO orders may be entered between 7:00 a.m. and 9:29:59 a.m., but they may not be cancelled or modified after 9:28 except to increase the number of shares. OIO sell (buy) orders shall only execute at or above (below) the 9:30 Nasdaq Market Center offer (bid).
- (7) "Market Hours Orders" shall mean any order that may be entered into the system and designated with a time-in-force of MIOC, MDAY, MGTC. Market Hours Orders shall be designated as "Early Market Hours Orders" if entered into the system prior to 9:28 a.m. and shall be treated as market-on-open and limit-on-open orders, as appropriate, for the purposes of the Nasdaq Opening Cross. Orders entered into the system at 9:28 a.m. or after shall be designated as "Late Market Hours Orders" and shall be treated as imbalance-only orders for the purposes of the cross. Beginning at 9:28 a.m., requests to cancel or modify Market Hours Orders shall be suspended until after completion of the Opening Cross at which time such requests shall be processed, to the extent that such orders remain available within the System.
- (8) "Open Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, SHEX, or GTMC.

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

- (1)** At 7:00 a.m., the system shall add in time priority all eligible Orders in accordance with each order's defined characteristics.
- (2)** At 9:25 a.m., the system shall open all remaining unopened Quotes in accordance with each firm's instructions.
- (3)** Nasdaq Quoting Market Participants may instruct Nasdaq to open their Quotes as follows:
 - (A)** At the price of the firm's quote when the quote was closed by the participant during the previous trading day with a normal unit of trading displayed size;
 - (B)** At a price and size entered by the participant between 7:00 a.m. and 9:24:59 a.m.
- (4)** All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier

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

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

- (1)** Beginning at 9:28 a.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds until market open.
- (2)**
 - (A)** The Nasdaq Opening Cross shall occur at the price that maximizes the number of shares of MOO, LOO, OIO, Early Market Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.
 - (B)** If more than one price exists under subparagraph (A), the Nasdaq Opening Cross shall occur at the price that minimizes any Imbalance.
 - (C)** If more than one price exists under subparagraph (B), the Nasdaq Opening Cross shall occur at the entered price at which shares will remain unexecuted in the cross.
 - (D)** If more than one price exists under subparagraph (C), the Nasdaq Opening Cross shall occur at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.

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- (E) If the Nasdaq Opening Cross price established by subparagraphs (A) through (D) is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Opening Cross shall occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (D). Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.
- (3) If the Nasdaq Opening Cross price is selected and fewer than all shares of MOO, LOO, OIO and Early Market Hours Orders that are available in the Nasdaq Market Center would be executed, all Quotes and Orders shall be executed at the Nasdaq Opening Cross price in the following priority:
 - (A) MOO and Early Market Hours market peg orders, with time as the secondary priority;
 - (B) LOO orders, Early Market Hours limit orders, OIO orders, SDAY limit orders, SGTC limit orders, GTMC limit orders, SHEX limit orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Opening Cross price based on limit price with time as the secondary priority;
 - (C) LOO orders, OIO Orders, Early Market Hours and displayed interest of quotes, SDAY limit orders, SGTC limit orders, GTMC limit orders, and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority;
 - (D) Reserve interest of quotes, SDAY limit orders, SGTC limit orders, and GTMC limit orders and SHEX limit orders at the Nasdaq Opening Cross price with time as the secondary priority; and
- (4) All Quotes and Orders executed in the Nasdaq Opening Cross shall be executed at the Nasdaq Opening Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Opening Cross price shall be the Nasdaq Official Opening Price for stocks that participate in the Nasdaq Opening Cross.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; Amended by SR-NASDAQ-2007-008 eff. Feb. 12, 2007; amended by SR-NASDAQ-2007-047 eff. May 1, 2007.

4753. Nasdaq Halt and Imbalance Crosses

(a) Definitions.

For the purposes of this rule the term:

- (1) "Imbalance" shall mean the number of shares of Eligible Interest that may not be matched with other order shares at a particular price at any given time.
- (2) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:
 - (A) "Current Reference Price" shall mean:

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- (i) The single price at which the maximum number of shares of Eligible Interest can be paired.
 - (ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.
 - (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.
 - (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean:
 - (a) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;
 - (b) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and
 - (c) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.
- (B) the number of shares of Eligible Interest that are paired at the Current Reference Price;
- (C) the size of any Imbalance;
- (D) the buy/sell direction of any Imbalance; and
- (E) indicative prices at which the Nasdaq Halt Cross would occur if the Nasdaq Halt Cross were to occur at that time. The indicative prices shall be:
- (i) The Far Clearing Price which shall be the same as the Current Reference Price, and
 - (ii) The Near Clearing Price which shall be the same as the Current Reference Price.
 - (iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for "market buy" or "market sell".
- (3) "Nasdaq Halt Cross" shall mean the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.

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- (4) "Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SIOC, SDAY, SGTC, MIOC, MDAY, MGTC, SHEX, or GTMC.
- (5) "Nasdaq Imbalance Cross" shall mean the process for determining when the market for a Nasdaq security is no longer trading in an orderly fashion and for determining the price at which Eligible Interest shall be executed in order to restore orderly trading.

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

- (1) At the beginning of the Display Only Period and continuing through the resumption of trading, Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds.
- (2)
 - (A) The Nasdaq Halt Cross shall occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed.
 - (B) If more than one price exists under subparagraph (A), the Nasdaq Halt Cross shall occur at the price that minimizes any Imbalance.
 - (C) If more than one price exists under subparagraph (B), the Nasdaq Halt Cross shall occur at the entered price at which shares will remain unexecuted in the cross.
 - (D) If more than one price exists under subparagraph (C), the Nasdaq Halt Cross shall occur at:
 - (i) In the case of an IPO, the price that is closest to the Issuer's Initial Public Offering Price;
 - (ii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; and
 - (iii) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price.
- (3) If the Nasdaq Halt Cross price is selected and fewer than all shares of Eligible Interest that are available in the Nasdaq Market Center would be executed, all Eligible Interest shall be executed at the Nasdaq Halt Cross price in price/time priority.
- (4) All Eligible Interest executed in the Nasdaq Halt Cross shall be executed at the Nasdaq Halt Cross price, trade reported anonymously, and disseminated via a national market system plan. The Nasdaq Halt Cross price shall be the Nasdaq Official Opening Price

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for stocks that participate in the Nasdaq Halt Cross unless the stock has already been traded during normal market hours on that trading day.

(c) Between 9:30 a.m. and 4:00 p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

- (1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

| Execution Price | Threshold Range Away From Triggering Price |
|----------------------------|---|
| \$1.75 and under | 15% |
| Over \$1.75 and up to \$25 | 10% |
| Over \$25 and up to \$50 | 5% |
| Over \$50 | 3% |

- (2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:
- (A) maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and
- (B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.
- (3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2) - (4) above.
- (4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A) - (D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

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

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

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

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2007-067 eff. August 19, 2008.

4754. Nasdaq Closing Cross

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

- (1) "Close Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC.
- (2) "Imbalance" shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, Close Eligible Interest or IO order shares at a particular price at any given time.
- (3) "Imbalance Only Order" or "IO" shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against MOC or LOC orders. IO orders can be entered between 7:00 a.m. and 3:59:59 p.m., but they cannot be modified after 3:50:00 except to increase the number of shares. IO orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). IO orders cannot be cancelled after 3:55:00 p.m. for any reason. IO sell (buy) orders will only execute at or above (below) the 4:00:00 System offer (bid).
- (4) "Limit On Close Order" or "LOC" shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected without restriction between 7:00 a.m. and 3:50:00 p.m. LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). LOC orders cannot be cancelled after 3:55:00 p.m. for any reason. LOC Orders will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.
- (5) "Market on Close Order or MOC" shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 7:00 a.m. and 3:50:00 p.m. MOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting Nasdaq to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order). MOC orders cannot be cancelled after 3:55:00 p.m. for any reason. MOC orders will execute only at the price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.
- (6) "Nasdaq Closing Cross" shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.
- (7) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price

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at which those orders would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

- (A)** "Current Reference Price" shall mean:
- (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, IO and Close Eligible Interest can be paired.
 - (ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.
 - (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.
 - (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.
- (B)** the number of shares represented by MOC, LOC, IO, and Close Eligible Interest that are paired at the Current Reference Price;
- (C)** the size of any Imbalance;
- (D)** the buy/sell direction of any Imbalance; and
- (E)** indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:
- (i) "Far Clearing Price" which shall mean the price at which both the MOC, LOC, and IO, orders would execute, and
 - (ii) "Near Clearing Price" which shall mean the price at which the MOC, LOC, IO, and Eligible Interest would execute.
 - (iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for "market buy" or "market sell".
- (b)** Processing of Nasdaq Closing Cross. The Nasdaq Closing Cross will begin at 4:00:00, and post-market hours trading will commence when the Nasdaq Closing Cross concludes.
- (1)** Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 5 seconds until market close.

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- (2)
- (A) The Nasdaq Closing Cross will occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed.
 - (B) If more than one price exists under subparagraph (A), the Nasdaq Closing Cross shall occur at the price that minimizes any Imbalance.
 - (C) If more than one price exists under subparagraph (B), the Nasdaq Closing Cross shall occur at the entered price at which shares will remain unexecuted in the cross.
 - (D) If more than one price exists under subparagraph (C), the Nasdaq Closing Cross shall occur at: a price that minimizes the distance from the System bid-ask midpoint at the time of the Nasdaq Closing Cross.
 - (E) If the Nasdaq Closing Cross price established by subparagraphs (A) through (D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.
- (3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC IO and Close Eligible Interest would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:
- (A) MOC orders, with time as the secondary priority;
 - (B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price based on price with time as the secondary priority;
 - (C) LOC orders, IO Orders displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;
 - (D) Reserve interest at the Nasdaq Closing Cross price with time as the secondary priority; and
 - (E) Unexecuted MOC, LOC, and IO orders will be canceled.
- (4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price, trade reported anonymously, and disseminated via the consolidated tape. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.
- (5) Auxiliary Procedures. When significant trading volume is expected at the close of Market hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice

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President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:

- (A) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.
- (B) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.
- (C) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order Imbalance Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.
- (D) Adjusting the threshold values set forth in subparagraph (c)(2)(D) to no greater than 20 percent.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4755. Order Entry Parameters

(a) System Orders

- (1) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.
 - (A) All System Orders shall indicate limit price and whether they are a buy, short sale, or long sale. Systems Orders can be designated as Market Hours Immediate or Cancel ("MIOC"), Market Hours Good-till-Cancelled ("MGTC"), Market Hours Day ("MDAY"), System Hours Expire Time ("SHEX"), System Hours Day ("SDAY"), System Hours Immediate or Cancel ("SIOC"), System Hours Good-till-Cancelled ("SGTC"), or Good-til-Market Close "GTMC").
 - (B) A System order may also be designated as Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, an Intermarket Sweep Order, a Price to Comply order, a Price to Comply Post order, a Discretionary Order, or a Directed Order.
 - (C) System Hours Pegged Orders, excluding System Hours Pegged orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"), may only be entered between 9:30 a.m. and 4:00 p.m. Eastern Time.
- (2) Reserved.

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- (3) Routing—All System orders entered by Participants directing or permitting routing to other market centers shall be routed for potential display and/or execution as set forth in Rule 4758. Beginning March 5, 2007, in connection with the trading of securities governed by Regulation NMS, System orders shall be routed for potential display and/or execution in Compliance with Regulation NMS.
- (4) Regulation NMS—Beginning March 5, 2007, in connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participants shall be responsible for compliance with Regulation NMS Order Protection Rule and Locked and Crossed market rule with respect to such orders. Orders eligible for execution outside the System shall be processed in compliance with Regulation NMS, including accessing protected quotations and resolving locked and crossed markets, as instructed.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-027 eff. Aug. 2, 2006; amended by SR-NASDAQ-2006-037 eff. Oct. 13, 2006; amended by SR-NASDAQ-2007-005 eff. Feb. 5, 2007; amended by SR-NASDAQ-2007-020 eff. Mar. 5, 2007; amended by SR-NASDAQ-2007-065 eff. Oct. 15, 2007.

4756. Entry and Display of Quotes and Orders

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

- (1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order shall indicate the amount of Reserve Size (if applicable).
- (2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.
- (3) Orders can be entered into the System (or previously entered orders cancelled) from 7:00 a.m. until 8:00 p.m. Eastern Time.

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

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

- (1) System Book Feed—quotes and orders resident in the System available for execution will be displayed via the System Book Feed.
- (2) Best Priced Order Display - For each System Security, the aggregate size of all Quotes and Orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot in which case the aggregate size will be displayed in the System Book Feed but not be transmitted to a network processor.

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- (3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:
- (A) Reserve Size—Reserve Size shall not be displayed in the System, but shall be accessible as described in Rule 4757.
 - (B) Discretionary Orders—The discretionary portion of Discretionary Orders shall not be displayed but shall be made available for execution only upon the appearance of contra-side marketable trading interest, and shall be executed pursuant to Rule 4751(f) and Rule 4757.
 - (C) Non-Displayed Orders—Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757.
- (4) Beginning March 5, 2007, in connection with the trading of securities governed by Regulation NMS, pursuant to Rule 600(b)(4) of Regulation NMS under the Act, Nasdaq has implemented such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations, as defined in Rule 600(b)(3) of Regulation NMS under the Act; and immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. Nasdaq has adopted policies and procedures for notifying members and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, Nasdaq has adopted policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-027 eff. Aug. 2, 2006; amended by SR-NASDAQ-2007-005 eff. Feb. 5, 2007; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4757. Book Processing

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

- (1) Execution Algorithm - Price/Time — The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:
- (A) Displayed Orders;
 - (B) Non-Displayed Orders, the reserve portion of Quotes and Reserve Orders, in price/time priority among such interest;
 - (C) The discretionary portion of Discretionary Orders as set forth in Rule 4751(f).
- (2) Decrementation—Upon execution, an order shall be reduced by an amount equal to the size of that execution.

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

Example:

Buy order resides on Nasdaq book at 10.

Incoming order to sell priced at 9 comes into the System

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

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4758. Order Routing

(a) Order Routing Process

- (1) The Order Routing Process shall be available to Participants from 7:00 a.m. until 8:00 p.m. Eastern Time, and shall route orders as described below: All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.
- (A) The System provides three routing options. Of these three, DOT is only available for orders ultimately sought to be directed to either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"). The System will consider the quotations only of accessible markets. The three System routing options are:
- (i) DOT ("DOT")—under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm's instructions, before being sent to the destination exchange, so long as the price at such market centers would not violate the Order Protection Rule. Any un-executed portion will thereafter be sent to the NYSE or AMEX, as appropriate, at the order's original limit order price. This option may only be used for orders with time-in-force parameters of either SDAY, SIOC, MDAY, MIOC, GTMC or market-on-open/close. Notwithstanding the foregoing, orders designated for participation in the NYSE or AMEX opening or closing processes will not check the System for available shares prior to routing.
 - (ii) Reactive Electronic Only ("STGY")—under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm's instructions. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. If shares remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. 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.

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- (iii) Electronic Only Scan ("SCAN")—under this option, after checking the System for available shares, orders are sent to other available market centers for potential execution, per entering firm's instructions, in compliance with Rule 611 under Regulation NMS. When checking the book, the System will seek to execute at the price it would send the order to a destination market center. If shares remain un-executed after routing, they are posted on the book. 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) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, 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.

(b) Routing Broker

- (1) All routing by the System shall be performed by the Nasdaq Stock Market LLC's affiliated broker-dealer, Nasdaq Execution Services LLC, which, in turn, shall route orders to other market centers as directed by the Nasdaq Stock Market LLC.
- (2) Nasdaq Execution Services LLC will not engage in any business other than: (a) as an outbound router for the Nasdaq Stock Market LLC and (b) any other activities it may engage in as approved by the Commission
- (3) Nasdaq Execution Services LLC shall operate as a facility, as defined in Section 3(a)(2) of the Act, of the Nasdaq Stock Market LLC.
- (4) For purposes of SEC Rule 17d-1, the designated examining authority of Nasdaq Execution Services LLC shall be a self-regulatory organization unaffiliated with the Nasdaq Stock Market LLC or any of its affiliates.
- (5) The Nasdaq Stock Market LLC shall be responsible for filing with the Securities and Exchange Commission rule changes related to the operation of, and fees for services provided by, Nasdaq Execution Services LLC and Nasdaq Execution Services shall be subject to exchange non-discrimination requirements.
- (6) The books, records, premises, officers, agents, directors and employees of Nasdaq Execution Services LLC as a facility of the Nasdaq Stock Market LLC shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Nasdaq Stock Market LLC for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of Nasdaq Execution Services LLC as a facility of the Nasdaq Stock market LLC shall be subject at all times to inspection and copying by the Commission.

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- (7) Use of Nasdaq Execution Services to route orders to other market centers will be optional. Parties that do not desire to use Nasdaq Execution Services LLC must enter orders into the Nasdaq Stock Market LLC as immediate-or-cancel orders or any other order-type available through the Nasdaq Stock Market LLC that is ineligible for routing.
- (8) Nasdaq Execution Services LLC shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Stock Market LLC and its facilities (including Nasdaq Execution Services LLC as its routing facility) and any other entity.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-027 eff. Aug. 2, 2006; amended by SR-NASDAQ-2006-043 eff. Oct. 10, 2006; amended by SR-NASDAQ-2007-005 eff. Feb. 5, 2007; amended by SR-NASDAQ-2007-078 eff. Sept. 7, 2007; amended by SR-NASDAQ-2007-065 eff. Oct. 15, 2007; amended by SR-NASDAQ-2008-054 eff. June 13, 2008; amended by SR-NASDAQ-2008-079 eff. September 26, 2008; amended by SR-NASDAQ-2008-098 eff. December 23, 2008.

4759. Reserved

Reserved

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-043 eff. Oct. 10, 2006; amended by SR-NASDAQ-2007-009 eff. Feb. 20, 2007; amended by SR-NASDAQ-2007-065 eff. Oct. 15, 2007; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4760. Anonymity

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

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

- (1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades;
- (2) for regulatory purposes or to comply with an order of an arbitrator or court;
- (3) if both Participants to the transaction consent;
- (4) Unless otherwise instructed by a member, Nasdaq will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote or Order has been decremented by another Quote or Order submitted by that same member.

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4761. Adjustment of Open Quotes and/or Orders

The Nasdaq Market Center will automatically adjust the price and/or size of open quotes and/or orders in all Nasdaq Market Center eligible securities (unless otherwise noted) resident in the system in

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response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent (\$0.01), as follows:

(a) Quotes — All bid and offer side quotes shall be purged from the system.

(b) Sell Orders — Sell side orders in Nasdaq-listed and NYSE-listed securities shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system. Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.

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

- (1)** Odd lot orders in non-Nasdaq listed securities that result from partial execution rather than order entry shall be cancelled rather than adjusted.
- (2)** Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".
- (3)** Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.
- (4)** Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (2) above, while the dollar value of the securities shall be determined using the formula in paragraph (3) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (3) above.
- (5)** Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.
- (6)** Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) Open buy and sell orders that are adjusted by the system pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

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Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006; amended by SR-NASDAQ-2006-043 eff. Oct. 10, 2006; amended by SR-NASDAQ-2008-054 eff. June 13, 2008.

4762. Clearly Erroneous Transactions

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

Adopted by SR-NASDAQ-2006-001 eff. Oct. 16, 2006.

4770. Nasdaq Crossing Network

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

- (1) "Nasdaq Reference Price Cross" shall mean the process for executing orders at a predetermined reference price at a randomly selected point in time during a five-second trading window beginning at 10:45 a.m., 12:45 p.m. and 2:45 p.m. Eastern Time during the regular hours session and at 4:30 p.m. during the after hours session.
- (2) "Nasdaq Reference Price Cross eligible securities" shall mean Nasdaq-listed securities and securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange.
- (3)
 - (A) "Reference Price Cross Order" or "RPC" shall mean a market or limit order to buy or sell in Nasdaq Reference Price eligible securities that may be executed only during a Nasdaq Reference Price Cross. RPC orders shall not be displayed and must be designated with a time-in-force value to participate either:
 - (i) in the next scheduled regular hours cross with unexecuted shares being immediately canceled back to the market participant after that cross (NXT);
 - (ii) in all remaining crosses during the trading day with unexecuted shares being immediately canceled back to the market participant after the final regular hours cross (REG); or
 - (iii) in all remaining crosses in the current day with unexecuted shares immediately canceled back to the market participant after the after hours cross (ALX).
 - (B) Starting at 7:30 a.m. Eastern Time until the time of the last after hours session Reference Price Cross, participants may enter, cancel or correct RPC orders, but such orders shall not be available for execution until the next eligible Reference Price Cross. RPC orders must be entered in round lots with a minimum size of one round lot and may designate a minimum acceptable execution quantity. All RPC orders must be available for automatic execution.

(b) Processing of Nasdaq Reference Price Cross.

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- (1) Each Nasdaq Reference Price Cross shall occur during the regular hours session or the after hours session window commencing at such times as may be designated by Nasdaq upon prior notice to market participants.
- (2) Nasdaq Reference Price Crosses that occur during the regular hours session shall be executed at the midpoint of the national best bid and offer, trade reported without identifying the contra party, and disseminated via the consolidated tape.
- (3) Nasdaq Reference Price Crosses that occur during the after hours session shall execute at the Nasdaq Official Closing Price for Nasdaq-listed securities or at the official closing price of the primary market for securities listed on the New York Stock Exchange, the American Stock Exchange or a regional exchange, shall be trade reported without identifying the contra party, and disseminated via the consolidated tape.
- (4) RPC orders will be allocated on a pro-rata basis, such that shares will be allocated pro-rata in round lots to eligible orders based on the original size of the order. If additional shares remain after the initial pro-rata allocation, those shares will continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares will be allocated to the order which has designated the smallest minimum acceptable execution quantity. If more than one such order exists, any remaining shares will be allocated to the oldest eligible order. If the allocation to an eligible order would be less than the minimum acceptable execution quantity for that order, the order shall not be eligible for execution in that cross.
- (5) If the reference price described in subparagraph (3) above is outside the benchmarks established by Nasdaq by a threshold amount at the time an after hours cross is scheduled to occur, the Nasdaq Reference Price Cross shall not occur for that security. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.
- (6) If the national best bid and offer is crossed at the time of a Reference Price Cross during the regular hours session, the cross shall be delayed for up to five minutes beyond the time the Reference Price Cross was scheduled to occur and shall execute at the midpoint of the national best bid and offer when the quote becomes uncrossed. In the event the quote remains crossed beyond five minutes after the time of the scheduled Reference Price Cross, the cross will not occur and unexecuted NXT orders shall be returned to market participants.
- (7) If the national best bid and offer is locked at the time of a Reference Price Cross during the regular hours session, the cross shall execute at the lock price.
- (8) If trading in a security is halted for regulatory or other reasons at the time a cross is scheduled to occur, the cross will not occur and all unexecuted NXT orders shall be returned to market participants.

Adopted by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2006-042 eff. Oct. 4, 2006; amended by SR-NASDAQ-2008-068 eff. Sept. 1, 2008.

4800. Deleted

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Continued

IM-4800 Deleted

Adopted by SR-NASDAQ-2006-005 eff. July 26, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4801. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4802. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-096 eff. Mar. 6, 2008; amended by SR-NASDAQ-2008-085 eff. October 30, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4803. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; amended by SR-NASDAQ-2007-021 eff. Mar. 6, 2007; amended by SR-NASDAQ-2008-085 eff. October 30, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

IM-4803. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-032 eff. Apr. 18, 2007; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4804. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-005 eff. July 26, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4805. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006). Amended by SR-NASDAQ-2008-085 eff. October 30, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4806. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-005 eff. July 26, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4807. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-005 eff. July 26, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4808. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4809. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-005 eff. July 26, 2006; amended by SR-NASDAQ-2008-085 eff. October 30, 2008; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4810. Deleted

Reserved by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

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4811. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4812. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4813. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2006-019 eff. July 28, 2006; deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4814. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4815. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

4816. Deleted

Adopted by SEC Release 34-53128 (Jan. 13, 2006); deleted by SR-NASDAQ-2009-018 eff. March 12, 2009.

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5000 Series

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5000 Series:

The Qualification, Listing, and Delisting of Companies

This Rule Series 5000 contains rules related to the qualification, listing and delisting of Companies on the Nasdaq Stock Market.

Rule 5100 discusses Nasdaq's general regulatory authority. Rule 5200 sets forth the procedures and prerequisites for gaining a listing on the Nasdaq Stock Market, as well as the disclosure obligations of listed Companies. Rules 5300, 5400, and 5500 contain the specific quantitative listing requirements for listing on the Global Select, Global Market, and Capital Market, respectively. The corporate governance requirements applicable to all Companies are contained in Rule 5600. Special listing requirements for securities other than common or preferred stock and warrants are contained in Rule 5700. The consequences of a failure to meet Nasdaq's listing standards are contained in Rule 5800. Finally, Company listing fees are described in Rule 5900.

Nasdaq exercises other authorities important to listed Companies discussed in other Rules Series in the Marketplace Rules. For example, Nasdaq may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company's securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1 and IM-5810). These authorities are exercised primarily by the MarketWatch Department and are contained in the Rule 4000 series.

Nasdaq and Financial Industry Regulatory Authority, Inc. ("FINRA") are parties to a regulatory contract pursuant to which FINRA has agreed to perform certain functions described in the Rules on behalf of Nasdaq. 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.

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Rule 5000. Definitions

5000. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

- (1) “Act” means the Securities Exchange Act of 1934.
- (2) “Best efforts offering” means an offering of securities by members of a selling group under an agreement that imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.
- (3) “Bid Price” means the closing bid price.
- (4) “Cash flows”, as it pertains to The Nasdaq Global Select Market, is defined in the Rule 5310(b).
- (5) “Commission” or “SEC” means the United States Securities and Exchange Commission.
- (6) “Company” means the issuer of a security listed or applying to list on Nasdaq. For purposes of the Rule 5000 Series, the term “Company” includes an issuer that is not incorporated, such as, for example, a limited partnership.
- (7) “Consolidated Quotation Service” (CQS) means the consolidated quotation collection system for securities listed on an exchange other than Nasdaq implementing Rule 602 of Regulation NMS under the Act.
- (8) “Country of Domicile” means the country under whose laws a Company is organized or incorporated.
- (9) “Covered Security” means a security described in Section 18(b) of the Securities Act of 1933.
- (10) “Direct Registration Program” means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder’s name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.
- (11) “Dually-Listed Security” means a security, listed on The Nasdaq Global Market or The Nasdaq Global Select Market, which is also listed on the New York Stock Exchange.
- (12) “EDGAR System” means the SEC’s Electronic Data Gathering, Analysis, and Retrieval system.
- (13) “ESOP” means employee stock option plan.
- (14) “Executive Officer” is defined in Rule 5605(a)(1).

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(15) “Filed with Nasdaq” means submitted to Nasdaq directly or filed with the Commission through the EDGAR System.

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

(17) “Family Member” is defined in Rule 5605(a)(2).

(18) “Foreign Private Issuer” shall have the same meaning as under Rule 3b-4 under the Act.

(19) “Independent Director” is defined in Rule 5605(a)(2).

(20) “Index Warrants” is defined in Rule 5725(a).

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

(22) “Market Value” means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company’s Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company’s Publicly Held Shares).

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

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

(25) “The Nasdaq Global Market” or “Global Market” or “NGM” is a distinct tier of Nasdaq comprised of two segments: The Nasdaq Global Market and The Nasdaq Global Select Market. The Nasdaq Global Market is the successor to the Nasdaq National Market.

(26) “Nasdaq Global Market security” or “NGM security” means any security listed on Nasdaq that (1) satisfies all applicable requirements of the Rule 5100 and 5200 Series and meets the criteria set forth in the Rule 5400 Series; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an Index Warrant which meets the criteria set forth in Rule 5725(a).

(27) “The Nasdaq Capital Market” or “Capital Market” is a distinct tier of Nasdaq comprised of securities that meet the requirements of the Rule 5100, 5200 and 5500 Series, and are listed as Nasdaq Capital Market securities. The Nasdaq Capital Market is the successor to The Nasdaq SmallCap Market.

(28) “Nasdaq Capital Market security” means any security listed on The Nasdaq Capital Market that (1) satisfies all applicable requirements of the Rule 5100, 5200 and 5500 Series but that is not a Nasdaq Global Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

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(29) “The Nasdaq Global Select Market” or “Global Select Market” or “Global Select” or “NGSM” is a segment of The Nasdaq Global Market comprised of NGM securities that met the requirements for initial inclusion contained in the Rule 5100, 5200 and 5300 Series.

(30) “Nasdaq Global Select Market security” or “NGSM security” means any security listed on Nasdaq and included in The Nasdaq Global Select segment of The Nasdaq Global Market.

(31) “Other Regulatory Authority” means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.

(32) “Primary Equity Security” means a Company’s first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (ADR) or Shares (ADS).

(33) “Publicly Held Shares” means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

(34) “Public Holders” means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

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

(36) “Round Lot Holder” means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

(37) “Shareholder” means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term “Shareholder” includes, for example, a limited partner, the owner of a depository receipt, or unit.

(38) “Substantial Shareholder” is defined in Rule 5635(e)(3).

(39) “Substitution Listing Event” means: a reverse stock split, re-incorporation or a change in the Company’s place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company’s listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company

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receive a share-for-share interest in the new Company without any change in their equity position or rights.

(40) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

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Rule 5100. Nasdaq's Regulatory Authority

5100. Nasdaq's Discretionary Authority

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

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its authority under Rule 5100, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

IM-5100-1. Use of Discretionary Authority

To further Companies' understanding of Rule 5100, Nasdaq has adopted this Interpretive Material as a non-exclusive description of the circumstances in which the Rule is generally invoked.

Nasdaq may use its authority under Rule 5100 to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company. Such individuals are typically an officer, director, Substantial Shareholder (as defined in Rule 5635(e)(3)), or consultant to the Company. In making this determination, Nasdaq will consider a variety of factors, including:

- *the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;*
- *whether the conduct involved fraud or dishonesty;*
- *whether the conduct was securities-related;*
- *whether the investing public was involved;*

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- *how the individual has been employed since the violative conduct;*
- *whether there are continuing sanctions (either criminal or civil) against the individual;*
- *whether the individual made restitution;*
- *whether the Company has taken effective remedial action; and*
- *the totality of the individual's relationship to the Company, giving consideration to:*
 - *the individual's current or proposed position;*
 - *the individual's current or proposed scope of authority;*
 - *the extent to which the individual has responsibility for financial accounting or reporting; and*
 - *the individual's equity interest.*

Based on this review, Nasdaq may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

- *the individual's resignation from officer and director positions, and/or other employment with the Company;*
- *divestiture of stock holdings;*
- *terminations of contractual arrangements between the Company and the individual; or*
- *the establishment of a voting trust surrounding the individual's shares.*

Nasdaq staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, Nasdaq may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that Nasdaq staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a listing qualifications panel comprised of persons independent of Nasdaq may accept, reject or modify the staff's recommendations by imposing conditions.

Nasdaq may also use its discretionary authority, for example, when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion

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on financial statements required to be audited, or when financial statements do not contain a required certification.

In addition, pursuant to its discretionary authority, Nasdaq will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed company is no longer listed on Nasdaq or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, Nasdaq may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a security, if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest.

Although Nasdaq has broad discretion under Rule 5100 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

IM-5100-2. Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

Generally, Nasdaq will not permit the initial or continued listing of a Company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.

(a) At least 90% of the gross proceeds from the initial public offering and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").

(b) Within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement, the Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.

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(c) Until the Company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the Company's Independent Directors.

(d) Until the Company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.

(e) Until the Company has satisfied the condition in paragraph (b) above, public Shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A Company may establish a limit (set no lower than 10% of the shares sold in the IPO) as to the maximum number of shares with respect to which any Shareholder, together with any affiliate of such Shareholder or any person with whom such shareholder is acting as a "group" (as such term is used in Sections 13(d) and 14(d) of the Act), may exercise such conversion rights. For purposes of this paragraph (e), public Shareholder excludes officers and directors of the Company, the Company's sponsor, the founding Shareholders of the Company, and any Family Member or affiliate of any of the foregoing persons.

Until the Company completes a business combination where all conditions in paragraph (b) above are met, the Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.

5110. Change of Control, Bankruptcy and Liquidation

(a) Business Combinations with non-Nasdaq Entities Resulting in a Change of Control

A Company must apply for initial listing in connection with a transaction whereby the Company combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing. In determining whether a change of control has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq Company and non-Nasdaq entity. The Company must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the Company's application for initial listing has not been approved prior to consummation of the transaction,

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Nasdaq will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

(b) Bankruptcy and Liquidation

Nasdaq may use its discretionary authority under Rule 5100 to suspend or terminate the listing of a Company that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, or has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, even though the Company's securities otherwise meet all enumerated criteria for continued listing on Nasdaq. In the event that Nasdaq determines to continue the listing of such a Company during a bankruptcy reorganization, the Company shall nevertheless be required to satisfy all requirements for initial listing, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

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Rule 5200. General Procedures and Prerequisites for Initial and Continued Listing on The Nasdaq Stock Market

5205. The Applications and Qualifications Process

(a) To apply for listing on Nasdaq, a Company shall execute a Listing Agreement and a Listing Application on the forms designated by Nasdaq providing the information required by Section 12(b) of the Act.

(b) A Company's compliance with the initial listing criteria will be determined on the basis of the Company's most recent information filed with the Commission or Other Regulatory Authority and information provided to Nasdaq. The Company shall certify, at or before the time of listing, that all applicable listing criteria have been satisfied.

(c) A Company's qualifications will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(d) A Company that has applied for initial listing on Nasdaq shall file with Nasdaq all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

(e) Nasdaq may request any information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading.

(f) All forms and applications relating to listing of securities on Nasdaq referenced in the Rule 5000 Series are available on www.nasdaq.com

(g) The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.

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

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5210. Prerequisites for Applying to List on The Nasdaq Stock Market

All Companies applying to list on The Nasdaq Stock Market must meet the following prerequisites:

(a) Registration under 12(b) of the Act

A security shall be eligible for listing on Nasdaq provided that it is:

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

(b) Auditor Registration

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(c) Direct Registration Program

All securities initially listing on Nasdaq must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. This provision does not extend to: (i) additional classes of securities of Companies which already have securities listed on Nasdaq; (ii) Companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S.; or, (iii) non-equity securities that are book-entry only. A Foreign Private Issuer may follow its home country practice in lieu of this requirement by utilizing the process described in Rule 5615(a)(3).

(d) Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

(e) Good Standing

No security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's country of domicile.

(f) Nasdaq Certification

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

(g) Security Depository

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(1) “Securities Depository” means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a security if the terms of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

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

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

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

(h) Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer’s participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the Independent Director and audit committee requirements set forth in the Rule 5600 Series.

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Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2810.

5215. American Depositary Receipts

(a) Eligibility

American Depositary Receipts can be listed on Nasdaq provided they represent shares in a non-Canadian foreign Company.

(b) Computations

In the case of American Depositary Receipts, annual income from continuing operations and Stockholders' Equity shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining annual income from continuing operations, Publicly Held Shares, Market Value of Publicly Held Shares, Stockholders' Equity, Round Lot or Public Holders, operating history, Market Value of Listed Securities, and total assets and total revenue.

5220. Dually-Listed Securities

Issuer Designation Requirements

Pursuant to Rule 600 of Regulation NMS under the Act, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission covering securities listed on Nasdaq.

IM-5220. Impact of Non-Designation of Dually Listed Securities

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

While Nasdaq shall certify such dually listed securities for listing on the NGM, Nasdaq shall not exercise its authority under Rule 5220 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape

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

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

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. Nasdaq Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas Nasdaq Rule 4120(a)(1), (4), (5), (6), and (7) shall not. The fees applicable to CQS securities set forth in Nasdaq Rule 7010 shall continue to apply to dually listed issues.

5225. Listing Requirements for Units

(a) The Global Select Market and Global Market

(1) Initial and Continued Listing Requirements

(A) All units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing on the Global Select Market or Global Market, as applicable, or, in the case of debt components, satisfy the requirements of 5225(a)(1)(B), set forth below.

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

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

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

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

(C) All components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements on the Global Select Market or Global Market, as applicable.

(2) Minimum Listing Period and Notice of Withdrawal

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

(3) Disclosure Requirements for Units

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

(4) Market Makers

(A) For initial inclusion, a unit shall have at least three registered and active Market Makers.

(B) For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

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(b) The Capital Market

(1) Units Issued by a Domestic or Canadian Company

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

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

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

(2) In the case of units issued by a non-Canadian foreign Company, all component parts shall meet the requirements for initial and continued listing.

(3) Market Makers

(A) For initial inclusion, a unit shall have at least three registered and active Market Makers.

(B) For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) Obligation to Provide Information to Nasdaq

Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading. The Company shall provide full and prompt responses to requests by Nasdaq or by FINRA acting on behalf of Nasdaq for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq.

(1) As set forth in Rule 5625, a Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any material noncompliance by the Company with the requirements of the Rule 5600 Series.

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(b) Obligation to Make Public Disclosure

(1) Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department if the information involves any of the events set forth in IM-5250-1. As described in IM-5250-1, prior notice to the MarketWatch Department should be made through the electronic disclosure submission system available at www.nasdaq.net.

(2) Going Concern Opinion

A Company other than a limited partnership that receives an audit opinion that expresses doubt about the ability of the Company to continue as a going concern for a reasonable period of time must make a public announcement through the news media disclosing the receipt of such opinion. Prior to the release of the public announcement, the Company must provide the text of the public announcement to the MarketWatch Department. The public announcement shall be provided to the MarketWatch Department and released to the media no-later than seven calendar days following the filing of such audit opinion in a public filing with the Commission.

(3) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from Nasdaq is required to make a public announcement through the news media disclosing receipt of the notification and the Rule(s) upon which the deficiency is based.

(c) Obligation to File Periodic Financial Reports

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

Each Foreign Private Issuer shall publish, in a press release and on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited

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partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

(2) Distribution of Interim Reports

Nasdaq Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Nasdaq Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

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(3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the regulatory authority, the Company shall file one copy of the report to Shareholders with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required

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by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with Nasdaq in addition to the report to the regulatory authority that is filed with Nasdaq pursuant to Rule 5250(c)(1).

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

(e) Nasdaq Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to Nasdaq as specified below.

All applicable forms can be found at

http://www.nasdaq.com/about/listing_information.stm#forms.

(1) Change in Number of Shares Outstanding

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

(2) Listing of Additional Shares

A Company shall be required to notify Nasdaq, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to:

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

(ii) Nasdaq recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(c)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify Nasdaq about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(c)(4); or

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

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

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

The notifications required by this paragraph must be made on the Notification Form: Listing of Additional Shares and Nasdaq encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. Nasdaq reviews these forms to determine compliance with applicable Nasdaq rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, Nasdaq may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

(3) Record Keeping Change

(A) The Company shall file on a form designated by Nasdaq notification of any corporate name change, or other change requiring payment of a record-keeping fee, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify Nasdaq promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

(4) Substitution Listing

The Company shall notify Nasdaq of a Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq. For a re-incorporation or change to a Company's place of organization, a Company shall notify Nasdaq as soon as practicable after such event has been implemented by filing the appropriate form as designated by Nasdaq. The Company shall also pay the appropriate Substitution Listing Fee as referenced in the Rule 5900 Series. The Substitution Listing Fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

(5) Transfer Agent, Registrar, ADR Bank Changes

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

(6) Dividend Action or Stock Distribution

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

- (i) notify Nasdaq by filing the appropriate form as designated by Nasdaq; and
- (ii) provide public notice using a Regulation FD compliant method.

Notice to Nasdaq should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

IM-5250-1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Nasdaq Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Nasdaq Companies must notify Nasdaq in the manner described below of the release of such material information that involves any of the events set forth below prior to its release to the public. Nasdaq recommends that Nasdaq Companies provide such notification at least ten minutes before such release. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Nasdaq Companies remain obligated to disclose this information to Nasdaq upon request pursuant to Rule 5250(a).

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

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effect on the trading in its securities or would likely have an influence on investment decisions.

Notification to Nasdaq MarketWatch Department

Nasdaq Companies must notify Nasdaq's MarketWatch Department prior to the distribution of certain material news. Except in emergency situations, this notification must be made through Nasdaq's electronic disclosure submission system available at www.nasdaq.net. In emergency situations, Companies shall instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

If a Nasdaq Company repeatedly fails to either notify Nasdaq prior to the distribution of material news, or repeatedly fail to use the electronic disclosure submission system when Nasdaq finds no emergency situation existed, Nasdaq may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, Nasdaq will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

Nasdaq's MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation

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to disclose to the MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when a Nasdaq Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

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

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

- (a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."*
- (b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.*

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(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8-K.

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

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

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

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5255. Direct Registration Program

(a)(1) Except as indicated in paragraph (a)(2) below, all securities listed on Nasdaq (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(2) Until March 31, 2009, a Foreign Private Issuer may follow its home country practice in lieu of the requirements of this Rule 5255, provided, however, that such a Company must follow the requirements of Rule 5615(a)(3) and IM-5615-3 for doing so. Thereafter, the listed securities of such Companies (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act unless prohibited from complying by a law or regulation in its home country.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A Foreign Private Issuer must be eligible to participate in a Direct Registration Program, as required by Rule 5255, unless prohibited from complying by a law or regulation in its home country. In such case, a Foreign Private Issuer may follow its home country practice in lieu of this requirement by using the process described in Rule 5615(a)(3).

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Rule 5300. The Nasdaq Global Select Market

5305. General Information for The Nasdaq Global Select Market

(a) A Company that applies for listing its securities on the Nasdaq Global Market and meets the requirements for initial listing contained in Rule 5315 shall be listed on the Nasdaq Global Select Market.

(b) Each October, Nasdaq will review the qualifications of all securities listed on the Nasdaq Global Market that are not included in the Nasdaq Global Select Market. Any security that meets the requirements for initial listing on the Nasdaq Global Select Market contained in Rule 5315 at the time of this review will be transferred to the Global Select Market the following January, provided it meets the continued listing criteria at that time. A Company will not owe any application or entry fees in connection with such a transfer.

(c) At any time, a Company may apply to transfer a security listed on the Nasdaq Global Market to the Nasdaq Global Select Market. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 5315. A Company will not owe any application or entry fees in connection with such a transfer.

(d) At any time, a Company may apply to transfer a security listed on the Nasdaq Capital Market to the Nasdaq Global Select Market. Such an application will be approved and effected as soon as practicable if the security meets the requirements for initial listing contained in Rule 5315. A Company transferring from the Nasdaq Capital Market to the Nasdaq Global Select Market will be required to pay the applicable fees contained in Rule 5910.

(e) After initial inclusion on the Nasdaq Global Select Market, a Company will remain on the Nasdaq Global Select Market provided it continues to meet the applicable requirements of the Listing Rules, including the continued listing requirements contained in the Rule 5400 Series, the requirements of the Rule 5100 Series, and the qualitative requirements of Rule 5200 and 5600 Series.

(f) Notwithstanding any provision to the contrary, the securities of any Company that is non-compliant with a qualitative listing requirement that does not provide for a grace period, or where Nasdaq staff has raised a public interest concern, will not be permitted to transfer to the Global Select Market until the underlying deficiency is resolved. In addition, any security that is below a quantitative continued listing requirement for the Nasdaq Global Market, even if the Company has not been below the requirement for a sufficient period of time to be considered non-compliant, and any Company in a grace or compliance period with respect to a quantitative listing requirement, will not be allowed to transfer from the Nasdaq Global or Capital Markets to the Nasdaq Global Select Market until the underlying deficiency is resolved. A Company before a Hearings Panel will not be allowed to transfer to the Global

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Select Market until the underlying deficiency is resolved. A Company that is in a grace or compliance period with respect to a qualitative listing standard, such as the cure period for filling an audit committee vacancy, will be allowed to transfer to the Global Select Market, subject to the continuation of that grace period.

5310. Definitions and Computations

(a) For Global Select purposes, a Company is affiliated with another Company if that other Company, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of the Company. Control, for these purposes, means having the ability to exercise significant influence. Ability to exercise significant influence will be presumed to exist where the parent or affiliated Company directly or indirectly owns 20% or more of the other Company's voting securities, and also can be indicated by representation on the board of directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

(b) In computing Cash Flows for Global Select purposes, Nasdaq will rely on the net cash provided by operating activities, as reported in the Company's financial information as filed with the Commission in the Company's most recent periodic report and/or registration statement excluding changes in working capital or in operating assets and liabilities.

(c) In computing Income from Continuing Operations Before Income Taxes for Global Select purposes, Nasdaq will rely on a Company's financial information as filed with the Commission in the Company's most recent periodic report and/or registration statement.

(d) In computing the number of Publicly Held Shares for Global Select purposes, Nasdaq will not consider shares held by an officer, director or 10% or greater Shareholder of the Company.

(e) In the case of a Company listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 5315(f)(3)(B) and (C) will be based on the Company's market capitalization at the time of listing.

(f) A period of less than three months shall not be considered a Fiscal Year, even if reported as a stub period in the Company's publicly reported financial statements.

(g) If a Company has less than three years of publicly reported financial data, it may qualify under Rule 5315(f)(3)(A) if it has (1) reported aggregate income from continuing operations before income taxes of at least \$11 million, and (2) positive income from continuing operations before income taxes in each of the reported fiscal years.

(h) If a Company has less than three years of publicly reported financial data, it may qualify under Rule 5315(f)(3)(C) if it has (1) reported aggregate cash flows of at least \$27.5 million, and (2) positive cash flows in each of the reported fiscal years.

5315. Initial Listing Requirements for Primary Equity Securities

Rule 5310 provides guidance about computations made under this Rule 5315.

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(a) For inclusion in the Global Select Market, a Company must meet all requirements in Rule 5315(e), all applicable requirements of Rules 5315(f)(1), 5315(f)(2) and 5315(f)(3) and all applicable requirements in the Listing Rules.

(b) However, if a Company is a closed end management investment company registered under the Investment Company Act of 1940, it must meet all requirements in Rule 5315(e), all applicable requirements in each of Rules 5315(f)(1) and 5315(f)(2), but not requirements of 5315(f)(3).

(c) A closed end management investment company that is listed concurrently with other closed end management investment companies that have a common investment adviser or whose investment advisers are “affiliated persons” as defined in the Investment Company Act of 1940 (a “Fund Family”) shall be eligible if:

(1) the total Market Value of Publicly Held Shares in such Fund Family is at least \$220 million;

(2) the average Market Value of Publicly Held Shares for all funds in the Fund Family is \$50 million; and

(3) each fund in the Fund Family has a Market Value of Publicly Held Shares of at least \$35 million.

(d) A business development company as defined in Section 2 of the Investment Company Act of 1940 must meet all requirements in Rule 5315(e), and all applicable requirements in each of Rules 5315(f)(1) and 5315(f)(2), but not the requirements in 5315(f)(3). In lieu of meeting Rule 5315(f)(3), a business development company must have a Market Value of Listed Securities of at least \$80 million.

(e) The Primary Equity Security shall meet all of the following:

(1) If the Company is not listed on the NGM, a bid price of at least \$4 per share;

(2) At least 1,250,000 Publicly Held Shares; and

(3) **Market Makers**

A Company that meets the requirements of the NGM Income Standard (Rule 5405(b)(1)) or the NGM Equity Standard (Rule 5405(b)(2)) shall have at least three registered and active Market Makers. Otherwise, a Company shall have at least four registered and active Market Makers.

(f) (1) **Ownership Requirement**

The Primary Equity Security shall meet no less than one of the following:

(A) At least 550 Total Holders and an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or

(B) At least 2,200 Total Holders; or

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(C) A minimum of 450 Round Lot Holders.

(2) Market Value Requirement

The Publicly Held Shares shall meet one of the following:

(A) A Market Value of at least \$110 million; or

(B) A Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million; or

(C) A Market Value of at least \$70 million in the case of: (i) a Company listing in connection with its initial public offering; (ii) a Company that is affiliated with, or a spin-off from, another Company listed on the Global Select Market; and (iii) a closed end management investment company registered under the Investment Company Act of 1940.

(3) Valuation Requirement

A Company, other than a closed end management investment company, shall meet the requirements of sub-paragraph (A), (B), or (C), below:

(A) (i) Aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or

(B) (i) Aggregate cash flows of at least \$27.5 million over the prior three fiscal years, (ii) positive cash flows in each of the prior three fiscal years, and (iii) average market capitalization of at least \$550 million over the prior 12 months and total revenue of at least \$110 million in the previous fiscal year; or

(C) (i) Average market capitalization at least \$850 million over the prior 12 months, and (ii) total revenue of at least \$90 million in the previous fiscal year.

5320. Other Classes of Securities

If the Primary Equity Security of a Company is included in the Global Select Market, any other security of that same Company, such as other classes of common or preferred stock, warrants and units, that qualify for listing on the Global Market shall also be included in the Global Select Market. However, exchange traded funds, index-linked securities, selected equity-linked debt securities, trust issued receipts, structured products and commodity-backed products will not be listed on the Global Select Market. See the Rule 5700 Series for rules relating to the listing of those securities and other securities not specified under the Global Select Market listing standards.

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Rule 5400. The Nasdaq Global Market

This section contains the initial and continued listing requirements and standards for listing a Company's Primary Equity Security on The Nasdaq Global Market. This section also contains the initial and continued listing requirements for Rights and Warrants, and Preferred and Secondary Classes of Common Stock on the Global Market.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of Rule 5100, the disclosure obligations set forth in Rule 5200, the Corporate Governance requirements set forth in Rule 5600, and pay any applicable fees in Rule 5900. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

Companies that meet the requirements of the 5500 series, but are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

For the requirements relating to other securities listed on the Global Market, see Rule 5700.

5405. Initial Listing Requirements and Standards for Primary Equity Securities

A Company applying to list its Primary Equity Security on the Global Market shall meet all of the requirements set forth in Rule 5405(a) and at least one of the Standards in Rule 5405(b).

(a) Initial Listing Requirements for Primary Equity Securities:

- (1) Minimum bid price of at least \$4 per share;
- (2) At least 1,100,000 Publicly Held Shares; and
- (3) At least 400 Round Lot Holders.

(b) Initial Listing Standards for Primary Equity Securities:

(1) Income Standard

- (A) Annual income from continuing operations before income taxes of at least \$1,000,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years;
- (B) Stockholders' equity of at least \$15 million;
- (C) Market Value of Publicly Held Shares of at least \$8 million; and
- (D) At least three registered and active Market Makers.

(2) Equity Standard

- (A) Stockholders' equity of at least \$30 million;
- (B) Two-year operating history;
- (C) Market Value of Publicly Held Shares of at least \$18 million; and

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(D) At least three registered and active Market Makers.

(3) Market Value Standard

A Company listed under this paragraph does not also need to be in compliance with the quantitative criteria for initial listing in the Rule 5500 series.

(A) Market Value of Listed Securities of \$75 million (current publicly traded Companies must meet this requirement and the \$4 bid price requirement for 90 consecutive calendar days prior to applying for listing if qualifying to list only under the Market Value Standard);

(B) Market Value of Publicly Held Shares of at least \$20 million; and

(C) At least four registered and active Market Makers.

(4) Total Assets/Total Revenue Standard

A Company listed under this paragraph does not also need to be in compliance with the quantitative criteria for initial listing in the Rule 5500 series.

(A) Total assets and total revenue of \$75 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;

(B) Market Value of Publicly Held Shares of at least \$20 million; and

(C) At least four registered and active Market Makers.

5410. Initial Listing Requirements for Rights and Warrants

For initial listing, the rights or warrants must meet all the requirements below:

(a) At least 450,000 rights or warrants issued;

(b) The underlying security must be listed on the Global Market or be a Covered Security; and

(c) There must be at least three registered and active Market Makers.

5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security of the Company is listed on the Global Market or is a Covered Security, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.

(1) At least 200,000 Publicly Held Shares;

(2) A Market Value of Publicly Held Shares of at least \$4,000,000;

(3) Minimum bid price of at least \$4 per share;

(4) At least 100 Round Lot Holders; and

(5) At least three registered and active Market Makers.

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(b) When the Company's Primary Equity Security is not listed on either the Global Market or is a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Global Market so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in Rule 5405.

5450. Continued Listing Requirements and Standards for Primary Equity Securities

A Company that has its Primary Equity Security listed on the Global Market must continue to substantially meet all of the requirements set forth in Rule 5450(a) and at least one of the Standards in Rule 5450(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series. A security maintaining its listing under 5450(b)(3) need not also be in compliance with the quantitative maintenance criteria in the Rule 5500 series.

(a) Continued Listing Requirements for Primary Equity Securities:

- (1) Minimum bid price of \$1 per share; and
- (2) At least 400 Total Holders.

(b) Continued Listing Standards for Primary Equity Securities:

(1) Equity Standard

- (A) Stockholders' equity of at least \$10 million;
- (B) At least 750,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$5 million; and
- (D) At least two registered and active Market Makers.

(2) Market Value Standard

- (A) Market Value of Listed Securities of at least \$50 million;
- (B) At least 1,100,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$15 million; and
- (D) At least four registered and active Market Makers.

(3) Total Assets/Total Revenue Standard

- (A) Total assets and total revenue of at least \$50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;
- (B) At least 1,100,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$15 million; and
- (D) At least four registered and active Market Makers.

5455. Continued Listing Requirements for Rights and Warrants

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For continued listing, the rights or warrants must meet all the requirements below:

- (a) The underlying security must continue to be listed on the Global Market or be a Covered Security; and
- (b) There must be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

5460. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Company's Primary Equity Security of the Company is listed on the Global Market or another National Securities Exchange, the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.

- (1) At least 100,000 Publicly Held Shares;
- (2) A Market Value of Publicly Held Shares of at least \$1,000,000;
- (3) Minimum bid price of at least \$1 per share;
- (4) At least 100 Public Holders; and
- (5) At least two registered and active Market Makers.

(b) When the Primary Equity Security of the Company is not listed on either the Global Market or another National Securities Exchange, the preferred stock and/or secondary class of common stock may continue to be listed on the Global Market so long as it satisfies the continued listing criteria for Primary Equity Securities set forth in Rule 5450.

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Rule 5500. The Nasdaq Capital Market

This section contains the initial and continued listing requirements and standards for listing a Company's Primary Equity Security on The Nasdaq Capital Market. This section also contains the initial and continued listing requirements for Rights and Warrants; Preferred and Secondary Classes of Common Stock; and Convertible Debt, Rights and Warrants on the Capital Market.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of Rule 5100, the disclosure obligations set forth in Rule 5200, the Corporate Governance requirements set forth in Rule 5600, and pay any applicable fees in Rule 5900. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

Companies that meet these requirements, but are not listed on the Nasdaq Global Market, are listed on the Nasdaq Capital Market.

5505. Initial Listing of Primary Equity Securities

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

- (1) Minimum bid price of \$4 per share;
- (2) At least 1,000,000 Publicly Held Shares;
- (3) At least 300 Round Lot Holders;
- (4) At least three registered and active Market Makers;
- (5) In the case of ADRs, at least 400,000 issued.

(b) Initial Listing Standards for Primary Equity Securities:

(1) Equity Standard

- (A) Stockholders' equity of at least \$5 million;
- (B) Market Value of Publicly Held Shares of at least \$15 million; and
- (C) Two year operating history.

(2) Market Value of Listed Securities Standard

- (A) Market Value of Listed Securities of at least \$50 million (current publicly traded Companies must meet this requirement and the \$4 bid price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the Market Value of Listed Securities Standard);

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(B) Stockholders' equity of at least \$4 million; and

(C) Market Value of Publicly Held Shares of at least \$15 million.

(3) Net Income Standard

(A) Net income from continuing operations of \$750,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years;

(B) Stockholders' equity of at least \$4 million; and

(C) Market Value of Publicly Held Shares of at least \$5 million.

5510. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security is listed on the Capital Market or is a Covered Security, a Company's preferred stock or secondary class of common stock must meet all of the requirements in Rules (1) through (5) below in order to be listed.

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

(2) At least 100 Round Lot Holders;

(3) At least 200,000 Publicly Held Shares;

(4) Market Value of Publicly Held Shares of at least \$3.5 million; and

(5) At least three registered and active Market Makers.

(b) In the event the Company's Primary Equity Security is not listed on the Capital Market or is not a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Capital Market so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in Rule 5505.

5515. Initial Listing Requirements for Rights, Warrants, and Convertible Debt

The following requirements apply to a Company listing convertible debt, rights or warrants on The Nasdaq Capital Market.

(a) For initial listing, rights, warrants and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time) must meet the following requirements:

(1) At least 400,000 issued;

(2) The underlying security must be listed on Nasdaq or be a Covered Security; and

(3) At least three registered and active Market Makers.

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(b) For initial listing, a convertible debt security must meet the requirements in (1) through (3), and one of the conditions in (4) must be satisfied:

- (1) Principal amount outstanding of at least \$10 million;
- (2) Current last sale information must be available in the United States with respect to the underlying security into which the bond or debenture is convertible;
- (3) At least three registered and active Market Makers; and
- (4) (A) the issuer of the debt must have an equity security that is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange;
(B) an issuer whose equity security is listed on Nasdaq, the American Stock Exchange or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security;
(C) a nationally recognized securities rating organization (an “NRSRO”) has assigned a current rating to the debt security that is no lower than an S&P Corporation “B” rating or equivalent rating by another NRSRO; or
(D) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (1) an investment grade rating to an immediately senior issue; or (2) a rating that is no lower than an S&P Corporation “B” rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

(c) In the case of Index Warrants, the requirements established in Rule 5725 for Nasdaq Global Market securities apply.

5550. Continued Listing of Primary Equity Securities

A Company that has its Primary Equity Security listed on the Capital Market must continue to meet all of the requirements set forth in Rule 5550(a) and at least one of the Standards set forth in Rule 5550(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) Continued Listing Requirements for Primary Equity Securities:

- (1) At least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid;
- (2) Minimum bid price of at least \$1 per share;
- (3) At least 300 Public Holders;
- (4) At least 500,000 Publicly Held Shares; and
- (5) Market Value of Publicly Held Shares of at least \$1 million.

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(b) Continued Listing Standards for Primary Equity Securities:

- (1) Stockholders' equity of at least \$2.5 million;
- (2) Market Value of Listed Securities of at least \$35 million; or
- (3) Net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

5555. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Primary Equity Security is listed on the Capital Market or is a Covered Security, a Company's preferred stock or secondary class of common stock must meet all of the requirements in (1) through (5) below in order to be listed. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

- (1) Minimum bid price of at least \$1 per share;
- (2) At least 100 Public Holders;
- (3) At least 100,000 Publicly Held Shares;
- (4) Market Value of Publicly Held Shares of at least \$1 million; and
- (5) At least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

(b) In the event the Company's Primary Equity Security is not listed on the Capital Market or is not a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Capital Market so long as the security satisfies the continued listing criteria for Primary Equity Securities set forth in Rule 5550.

5560. Continued Listing Requirements for Rights, Warrants, and Convertible Debt

(a) For rights, warrants, and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time), the underlying security must remain listed on Nasdaq or be a Covered Security, and there must be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

(b) A convertible debt security must meet the following requirements for continued listing:

- (1) A principal amount outstanding of at least \$5 million;

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- (2) At least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid; and
- (3) Current last sale information must be available in the United States with respect to the underlying security into which the bond or debenture is convertible.

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Rule 5600. Corporate Governance Requirements

In addition to meeting the quantitative requirements in Sections 5200, 5300, 5400 and 5500, Companies applying to list and listed on Nasdaq must meet the qualitative requirements outlined in this 5600 Section. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; and shareholder approval, including voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

Nasdaq maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5600.

5600. Written Interpretations of Nasdaq Listing Rules

(a) A Company listed on the Nasdaq Capital Market or the Nasdaq Global Market may request from Nasdaq a written interpretation of the Rules contained in the 5000 through 5900 Series. In connection with such a request, the Company must submit to Nasdaq a non-refundable fee of \$5,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b) Notwithstanding paragraph (a), a Company may request a written interpretation of the Rules contained in the 5000 through 5900 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the Company must submit to Nasdaq a non-refundable fee of \$15,000.

(c) An applicant to Nasdaq that has submitted the applicable entry fee under Rule 5910(a) or Rule 5920(a) will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on Nasdaq. In addition, a Company is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to the financial viability exception as described in Rule 5635(f).

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

(e) Nasdaq shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.

(f) A Company is eligible to request a written interpretation from Nasdaq pursuant to paragraphs (a) or (b), subject to payment of the appropriate fee, if it has a class of securities

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that has been suspended or delisted from the Nasdaq Capital Market or the Nasdaq Global Market, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series.

5605. Board of Directors and Committees

(a) Definitions

(1) "Executive Officer" means those officers covered in Rule 16a-1(f) under the Act.

(2) "Independent Director" means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home. The following persons shall not be considered independent:

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

(B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).

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

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

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

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

(E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

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

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

IM-5605. Definition of Independence — Rule 5605(a)(2)

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

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

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For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

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

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

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.

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

(b) Independent Directors

(1) Majority Independent Board

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company must disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).

(A) Cure Period for Majority Independent Board

If a Company fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

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IM-5605-1. Majority Independent Board

Majority Independent Board. *Independent Directors (as defined in Rule 5605(a)(2)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the Companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of Independent Directors empowers such directors to carry out more effectively these responsibilities.*

(2) Executive Sessions

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

IM-5605-2. Executive Sessions of Independent Directors

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

(c) Audit Committee Requirements

(1) Audit Committee Charter

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

- (A) the scope of the audit committee’s responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;
- (B) the audit committee’s responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, consistent with Independence Standards Board Standard 1, and the audit committee’s responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and
- (C) the committee’s purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company;
- (D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).

IM-5605-3. Audit Committee Charter

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

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

(2) Audit Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be independent as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Non-Independent Director for Exceptional and Limited Circumstances

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not independent as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not a current officer or employee or a Family Member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for that determination. A member appointed

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under this exception may not serve longer than two years and may not chair the audit committee.

IM-5605-4. Audit Committee Composition

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. It is recommended that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed independent but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 401(h) of Regulation S-K or Item 401(e) of Regulation S-B is presumed to qualify as a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

(3) Audit Committee Responsibilities and Authority

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

IM-5605-5. The Audit Committee Responsibilities and Authority

Audit committees must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to registered public accounting firms; complaints relating to accounting; internal accounting controls or auditing matters; authority to engage advisors; and funding. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator,

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principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(4) Cure Periods for Audit Committee

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the noncompliance.

(5) Exception

At any time when a Company has a class of common equity securities (or similar securities') that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

(d) Independent Director Oversight of Executive Officer Compensation

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

(A) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate; or

(B) a compensation committee comprised solely of Independent Directors.

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

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(2) Compensation of all other Executive Officers must be determined, or recommended to the Board for determination, either by:

(A) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate; or

(B) a compensation committee comprised solely of Independent Directors.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraphs 5605(d)(1)(B) and 5605(d)(2)(B) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

IM-5605-6. Independent Director Oversight of Executive Compensation

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

(e) Independent Director Oversight of Director Nominations

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

(A) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate, or

(B) a nominations committee comprised solely of Independent Directors.

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

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

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Notwithstanding paragraph 5605(e)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders, and the board discloses, in the proxy statement for next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

(4) Independent Director oversight of director nominations shall not apply in cases where the right to nominate a director legally belongs to a third party. However, this does not relieve a Company's obligation to comply with the committee composition requirements under Rules 5605(c), (d) and (e).

(5) This Rule 5605(e) is not applicable to a Company if the Company is subject to a binding obligation that requires a director nomination structure inconsistent with this rule and such obligation pre-dates the approval date of this rule.

IM-5605-7 Independent Director Oversight of Director Nominations

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

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

5610. Code of Conduct

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act of 2002 ("the

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Sarbanes-Oxley Act”) and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers in a Form 8-K within four business days. Foreign Private Issuers shall disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F.

IM-5610. Code of Conduct

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

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a “code of ethics” under Section 406(c) of the Sarbanes-Oxley Act of 2002 (“the Sarbanes-Oxley Act”) and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a “code of ethics.”

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors — there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the

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reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers in a Form 8-K within four business days. Foreign Private Issuers must disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

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

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

(a) Exemptions to the Corporate Governance Requirements

(1) Asset-backed Issuers and Other Passive Issuers

The following are exempt from the requirements relating to Majority Independent Board [5605(b)], Audit Committee [5605(c)], Independent Director Oversight of Executive Officer Compensation [5605(d)] and Director Nominations [5605(e)], the Controlled Company Exemption [5615(c)(2)], and Code of Conduct [5610]:

(A) asset-backed issuers; and

(B) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

IM-5615-1. Asset-backed Issuers and Other Passive Issuers

Because of their unique attributes, Rules 5605(b), 5605(c), 5605(d), 5605(e) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for

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the benefit of the holders of the listed securities. This is consistent with Nasdaq's traditional approach to such issuers.

(2) Cooperatives

Cooperative entities, such as agricultural cooperatives, that are structured to comply with relevant state law and federal tax law and that do not have a publicly traded class of common stock are exempt from Rules 5605(b), (d), (e), and 5615(c)(2). However, such entities must comply with all federal securities laws, including without limitation those rules required by Section 10A(m) of the Act and Rule 10A-3 thereunder.

IM-5615-2. Cooperatives

Cooperatives. Certain member-owned cooperatives that list their preferred stock are required to have their common stock owned by their members. Because of their unique structure and the fact that they do not have a publicly traded class of common stock, such entities are exempt from Rule 5605(b), (d), and (e). Again, this is consistent with Nasdaq's traditional approach to such Companies.

(3) Foreign Private Issuers

A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series and the Direct Registration Program requirement set forth in 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Material Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). A Foreign Private Issuer that follows a home country practice in lieu of one or more provisions of Rule 5600 and the Direct Registration Program requirement set forth in 5210(c) and 5255 shall disclose in its annual reports filed with the Commission or on its website each requirement that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. In addition, a Foreign Private Issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in its registration statement or on its website. Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the 5000 Series, including the going concern disclosure requirement in Rule 5250(b)(2), and the listing agreement requirement in Rule 5205(a).

IM-5615-3. Foreign Private Issuers

A Foreign Private Issuer (as defined in Rule 5000) listed on Nasdaq may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of Rule 5600, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Material Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in

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Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(c) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of Rule 5600 shall submit to Nasdaq a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, the Company may provide these disclosures in English on its website. The Company shall disclose each requirement of Rule 5600 that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained.

(4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5600.

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

(B) Corporate General Partner

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) Independent Directors/Audit Committee

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The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(c).

(D) Partner Meetings

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

(E) Quorum

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

(F) Solicitation of Proxies

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

(G) Review of Related Party Transactions

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

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, as would be required under Rule 5635(c) and IM-5635-1.

(I) Auditor Registration

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7212].

(J) Notification of Material Noncompliance.

Each Company that is a limited partnership must provide Nasdaq with prompt notification after an Executive Officer of the Company, or a person performing an

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equivalent role, becomes aware of any material noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements of Independent Directors and the Code of Conduct requirements set forth in Rules 5605(b) and 5610, respectively.

IM-5615-4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq exempts from Rule 5605(b) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) Phase-In Schedules

(1) Initial Public Offerings

A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rules 5605(d) and (e) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act. Accordingly, a Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 5605(d) and (e) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Furthermore, a Company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 5605(b). It should be noted, however, that pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act. Companies may choose not to adopt a compensation or nomination committee and may instead rely upon a majority of the Independent Directors to discharge responsibilities under Rule 5605(b). For purposes of the Rule 5600 Series other than Rules 5605(c)(2)(A)(ii) and 5625, a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 5605(c)(2)(A)(ii) and Rule 5625, a Company shall be considered to be listing in conjunction with an initial

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public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(2) Companies Emerging from Bankruptcy

Companies that are emerging from bankruptcy shall be permitted to phase-in independent nomination and compensation committees and majority independent boards on the same schedule as Companies listing in conjunction with their initial public offering.

(3) Transfers from other Markets

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

(c) How the Rules Apply to a Controlled Company

(1) Definition

A Controlled Company is a Company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

(2) Exemptions Afforded to a Controlled Company

A Controlled Company is exempt from the requirements of Rules 5605(b), (d) and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors. A Controlled Company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination.

(3) Phase-In Schedule for a Company Ceasing to be a Controlled Company

A Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) shall be permitted to phase-in its independent nomination and compensation committees and majority independent board on the same schedule as Companies listing in conjunction with their initial public offering. It should be noted, however, that a Company that has ceased to be a Controlled Company within the meaning of Rule 5615(c)(1) must comply with the audit committee requirements of Rule 5605(c) as of the date it ceased to be a Controlled Company. Furthermore, the executive sessions requirement of Rule 5605(b)(2) applies to Controlled Companies as of the date of listing and continues to apply after it ceases to be controlled.

IM-5615-5. Controlled Company Exemption

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This exemption recognizes that majority Shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the Shareholders must have publicly filed a notice that they are acting as a group (e.g., a Schedule 13D). A Controlled Company not relying upon this exemption need not provide any special disclosures about its controlled status. It should be emphasized that this controlled company exemption does not extend to the audit committee requirements under Rule 5605(c) or the requirement for executive sessions of Independent Directors under Rule 5605(b)(2).

5620. Meetings of Shareholders

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).

IM-5620. Meetings of Shareholders or Partners

Rule 5620 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, Nasdaq's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

This requirement is not applicable as a result of a Company listing the following types of securities: securities listed pursuant to Rule 5730(a) (such as Trust Preferred Securities and Contingent Value Rights), unless the listed security is a common stock or voting preferred stock equivalent (e.g., a callable common stock); Portfolio Depository Receipts and Index Fund Shares listed pursuant to Rules 5705(a) and (b); and Trust Issued Receipts listed pursuant to Rule 5720. Notwithstanding, if the Company also lists common stock or voting preferred stock, or their equivalent, the Company must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.

(b) Proxy Solicitation

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to Nasdaq. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

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(c) Quorum

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

5625. Notification of Material Noncompliance

A Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any material noncompliance by the Company with the requirements of this Rule 5600 Series.

5630. Review and Approval of Related Party Transactions

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of small business issuers (as that term is defined in Rule 12b-2 under the Act), the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-B under the Act, and in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).

5635. Shareholder Approval

This Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) the acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees or consultants; (iii) a change of control; and (iv) private placements. General provisions relating to shareholder approval are set forth in 5635(e), and the financial viability exception to the shareholder approval requirement is set forth in 5635(f). Nasdaq-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5600.

(a) Acquisition of Stock or Assets of Another Company

Shareholder approval is required prior to the issuance of securities in connection with the acquisition of the stock or assets of another company if:

- (1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

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- (A) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or
- (B) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or
- (2) any director, officer or Substantial Shareholder (as defined by Rule 5635(e)(3)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or

(b) Change of Control

Shareholder approval is required prior to the issuance of securities when the issuance or potential issuance will result in a change of control of the Company.

(c) Equity Compensation

Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

- (1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);
- (2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;
- (3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635-1; or
- (4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in

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a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

IM-5635-1. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(c) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(c) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

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

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an “evergreen formula”), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury

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shares or repurchased shares will not alleviate these additional shareholder approval requirements.

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

Rule 5635(c) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

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

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(c). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or

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another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

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

For purposes of Rule 5635(c) and IM-5635-1, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Â§1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity

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contributions under the plan in excess of 25% of the participant's cash compensation.

(d) Private Placements

Shareholder approval is required prior to the issuance of securities in connection with a transaction other than a public offering involving:

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

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

IM-5635-2. Interpretative Material Regarding the Use of Share Caps to Comply with Rule 5635

Rule 5635 limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities. (An exception to this rule is available to Companies when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise as set forth in Rule 5635(f). However, a share cap is not permissible in conjunction with the financial viability exception provided in Rule 5635(f), because the application to Nasdaq and the notice to Shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.) Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance. (While Nasdaq's experience is that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in Rule 5635(a)(2).) Companies sometimes comply with the 20% limitation in this rule by placing a "cap" on the number of shares that can be issued in the transaction, such that there cannot, under any circumstances, be an issuance of 20% or more of the common stock or voting power previously outstanding without prior shareholder approval. If a Company determines to defer a shareholder vote in this manner, shares that are issuable under the cap (in the first part of the transaction) must not be entitled to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction, unless shareholder approval is obtained. For example, caps that no longer apply if a Company is not listed on Nasdaq are not permissible under the Rule. Of course, if shareholder approval is not obtained,

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then the investor will not be able to acquire 20% or more of the common stock or voting power outstanding before the transaction and would continue to hold the balance of the original security in its unconverted form.

Nasdaq has observed situations where Companies have attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, including, but not limited to a “penalty” or a “sweetener.” Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no common shares may be issued prior to the approval of the Shareholders. Companies that engage in transactions with defective caps may be subject to delisting. For example, a Company issues a convertible preferred stock or debt instrument that provides for conversions of up to 20% of the total shares outstanding with any further conversions subject to shareholder approval. However, the terms of the instrument provide that if Shareholders reject the transaction, the coupon or conversion ratio will increase or the Company will be penalized by a specified monetary payment, including a rescission of the transaction. Likewise, a transaction may provide for improved terms if shareholder approval is obtained. Nasdaq believes that in such situations the cap is defective because the presence of the alternative outcome has a coercive effect on the shareholder vote, and thus may deprive Shareholders of their ability to freely exercise their vote. Accordingly, Nasdaq will not accept a cap that defers the need for shareholder approval in such situations.

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

IM-5635-3. Definition of a Public Offering

Rule 5635(d) provides that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under this rule, however, shareholder approval is not required for a “public offering.”

Companies are encouraged to consult with Nasdaq staff in order to determine if a particular offering is a “public offering” for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm

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commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Nasdaq staff will not treat an offering as a “public offering” for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

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

- (i) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the Company);*
- (ii) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);*
- (iii) the extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the Company and those investors);*
- (iv) the offering price (including the extent of any discount to the market price of the securities offered); and*
- (v) the extent to which the Company controls the offering and its distribution.*

(e) Definitions and Computations Relating to the Shareholder Approval Requirements

(1) For purposes of making any computation in this paragraph, when determining the number of shares issuable in a transaction, all shares that could be issued are included, regardless of whether they are currently treasury shares. When determining the number of shares outstanding, only shares issued and outstanding are considered. Treasury shares, shares held by a subsidiary, and unissued shares reserved for issuance upon conversion of securities or upon exercise of options or warrants are not considered outstanding.

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

(3) An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party

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shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a “Substantial Shareholder.”

(4) Where shareholder approval is required, the minimum vote that will constitute shareholder approval shall be a majority of the total votes cast on the proposal. These votes may be cast in person, by proxy at a meeting of Shareholders or by written consent in lieu of a special meeting to the extent permitted by applicable state and federal law and rules (including interpretations thereof), including, without limitation, Regulations 14A and 14C under the Act. Nothing contained in this Rule 5635(e)(5) shall affect a Company’s obligation to hold an annual meeting of Shareholders as required by Rule 5620(a).

(5) Shareholder approval shall not be required for any share issuance if such issuance is part of a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws.

(f) Financial Viability Exception

An exception applicable to a specified issuance of securities may be made upon prior written application to Nasdaq’s Listing Qualifications Department when:

- (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and
- (2) reliance by the Company on this exception is expressly approved by the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors. The Listing Qualifications Department shall respond to each application for such an exception in writing.

A Company that receives such an exception must mail to all Shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the Company is relying on a financial viability exception to the stockholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved reliance on the exception. The Company shall also make a public announcement through the news media disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.

IM-5635-4. Interpretive Material Regarding Future Priced Securities and Other Securities with Variable Conversion Terms

Summary

Provisions of this IM-5635-4 would apply to any security with variable conversion terms. For example, Future Priced Securities are private financing

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

For example, a Company may issue \$10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into \$10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is \$5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is \$1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

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

- 1. the shareholder approval rules [see Rule 5635]*
- 2. the voting rights rules [see Rule 5640]*
- 3. the bid price requirement [see Rules 5450(a)(1) and 5555(b)(1)]*
- 4. the listing of additional shares rules [see Rule 5250(e)(2)]*
- 5. the change in control rules [see Rule 5635(b) and 5110(a)]*
- 6. Nasdaq's discretionary authority rules [see Rule 5100]*

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

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

How the Rules Apply

Shareholder Approval

Rule 5635(d) provides, in part:

Each Company shall require shareholder approval prior to the issuance of securities in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.

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

When Nasdaq staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained prior to the issuance

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of the Future Priced Security. Companies should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20% or more of the common stock or voting power outstanding before the issuance of the Future Priced Security (See IM-5635-2, Interpretative Material Regarding the Use of Share Caps to Comply with Rule 5635), or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rule 5635(b) if the issuance will result in a change of control. Additionally, discounted issuances of common stock to officers, directors, employees or consultants require shareholder approval pursuant to 5635(c).

Voting Rights

Rule 5640 provides:

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

IM-5640 also provides rules relating to voting rights of Nasdaq Companies.

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

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created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

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

The Bid Price Requirement

The bid price requirement establishes a minimum bid price for issues listed on Nasdaq. The Nasdaq Rules provide that, for an issue to be eligible for continued listing on Nasdaq, the minimum bid price per share shall be \$1. An issue is subject to delisting from Nasdaq, as described in the Rule 5800 Series if its bid price falls below \$1.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the Company's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement. (If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by Nasdaq Rules and may be prohibited by the terms of the placement.)

Listing of Additional Shares

Rule 5250(e)(2) provides:

The Company shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to: establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval; issuing securities that may potentially result in a change of control of the Company; issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or Substantial Shareholder of the Company has a 5% or greater interest (or if such persons collectively have a

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10% or greater interest) in the Company to be acquired or in the consideration to be paid; or entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

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

Public Interest Concerns

Rule 5100 provides:

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

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Listing Rules, has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

The returns on Future Priced Securities may become excessive compared with those of public investors in the Company's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under Rule 5100. In addition to the demonstrable business purpose of the transaction, other factors that Nasdaq staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the Company's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between

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the Future Priced Security investor and the Company; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

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

Business Combinations with non-Nasdaq Entities Resulting in a Change of Control

Rule 5110(a) provides:

A Company must apply for initial listing in connection with a transaction whereby the Company combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing. In determining whether a change of control has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq Company and non-Nasdaq entity. The Company must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the Company's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Determination Letter as set forth in Rule 5810 and begin delisting proceedings pursuant to the Rule 5800 Series.

This provision, which applies regardless of whether the Company obtains shareholder approval for the transaction, requires Companies to qualify under the initial listing standards in connection with a combination that results in a change of control. It is important for Companies to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in the holders of the Future Priced Securities obtaining control of the listed Company. In such event, a Company may be required to re-apply for initial listing and satisfy all initial listing requirements.

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5640. Voting Rights

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

IM-5640. Voting Rights Policy

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

Companies with Dual Class Structures

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

Consultation with Nasdaq

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

Review of Past Voting Rights Activities

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In reviewing an application for initial qualification for listing of a security in Nasdaq, Nasdaq will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, Nasdaq may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. Nasdaq will also review whether a Company seeking initial listing of a security in Nasdaq has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, Nasdaq will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

Non-U.S. Companies

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

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5700. Other Securities

This section contains the requirements for listing other securities on The Nasdaq Global Market. In the event that a Company's Primary Security is listed on the Nasdaq Global Select Market, the other securities may be listed on the Nasdaq Global Select Market.

5705. Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares

(a) Portfolio Depository Receipts

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

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

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

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above;

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

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

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

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other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

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

(C) U.S. Component Stock. The term "U.S. Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(D) Non-U.S. Component Stock. The term "Non-U.S. Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

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

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

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

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

(A) Eligibility Criteria for Index Components.

(i) U.S. Index or Portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the component stocks of an index or portfolio of U.S. Component Stocks underlying such series of Portfolio Depository Receipts shall meet the following criteria:

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

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks;
and

e. All securities in the index or portfolio shall be U.S. Component Stocks listed on Nasdaq (including The Nasdaq Capital Market) or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Portfolio Depository Receipts that consist of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

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c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

e. Each U.S. Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-U.S. Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

a. a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act; or

b. a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation.

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

(ii) The current index value for Portfolio Depository Receipts listed pursuant to:

a. Rule 5205(a)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during Nasdaq's regular market session.

b. Rule 5205(a)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during Nasdaq's regular market session; or

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c. Rule 5205(a)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only U.S. Component Stocks and at least every 60 seconds with respect to indexes containing Non-U.S. Component Stocks, during Nasdaq's regular market session.

If the index value does not change during some or all of the period when trading is occurring on Nasdaq (for example, for indexes of Non-U.S. Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout Nasdaq's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during Nasdaq's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during Nasdaq's regular market session to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on Nasdaq, then the last official calculated Intraday Indicative Value must remain available throughout Nasdaq's trading hours.

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

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

(F) Creation and redemption. For Portfolio Depository Receipts listed pursuant to Rule 5205(a)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Portfolio Depository Receipts must state that the Trust must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. Nasdaq may approve a series of Portfolio Depository Receipts based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Act provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and the rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, each component of an index or portfolio that underlies a series of Portfolio Depository Receipts shall meet the following criteria:

- (i) The index or portfolio must consist of Fixed Income Securities;
- (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;
- (iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;
- (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;
- (v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and
- (vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

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(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(5) Nasdaq may approve a series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Act provided: (i) each index has been reviewed and approved for the trading of options, Portfolio Depositary Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 5205(a)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during the regular market session, provided however, that (a) with respect to the Non-U.S. Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Portfolio Depositary Receipts listed pursuant Rules 5205(a)(4) and (5) above:

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- (A) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by Nasdaq or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.
- (B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.
- (C) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.
- (7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by Nasdaq. In addition, Nasdaq may designate each series of Portfolio Depository Receipts for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 8:00 p.m.
- (8) Nasdaq may list and trade Portfolio Depository Receipts based on one or more indexes or portfolios. The Portfolio Depository Receipts based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components of an index or portfolio on which Portfolio Depository Receipts are based shall be selected by Nasdaq or its agent, a wholly-owned subsidiary of Nasdaq, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.
- (9) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on Nasdaq subject to application of the following criteria:
- (A) Initial Listing —
- (i) for each Trust, Nasdaq will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on Nasdaq.
- (ii) Nasdaq will obtain a representation from the issuer of each series of Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.
- (B) Continued Listing —

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

- a. if , following the initial twelve month period after the formation of a Trust and commencement of trading on Nasdaq, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days;
- b. if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available or the index or portfolio on which the Trust is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5205(a) for listing either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Act; or
- c. if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

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

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

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

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

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failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(b) Index Fund Shares

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

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

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

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

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

(B) (i) The term “Index Fund Share” includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash as defined in subparagraph (1)(B)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder’s request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap

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agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic equity, international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Act.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B) of this rule, the following requirements must be adhered to:

Daily public website disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

- a. The identity and number of shares held of each specific equity security;
- b. The identity and amount held for each specific fixed income security;
- c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and
- d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to an Index Fund Shares included in the provisions of this subparagraph (1)(B)(ii) of this rule, is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings occurs, as appropriate.

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

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distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

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

(D) U.S. Component Stock. The term "U.S. Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) Non-U.S. Component Stock. The term "Non-U.S. Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

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

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

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

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

(A) Eligibility Criteria for Index Components.

(i) U.S. Index or Portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component stocks of an index or portfolio of U.S. Component Stocks underlying a series of Index Fund Shares shall meet the following criteria:

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

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 13 component stocks; and

e. All securities in the index or portfolio shall be U.S. Component Stocks listed on Nasdaq (including The Nasdaq Capital Market) or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Index Fund Shares that consist of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks shall meet the following criteria:

a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

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c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

e. Each U.S. Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-U.S. Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

a. a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or

b. a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation

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

(ii) The current index value for Index Fund Shares listed pursuant to:

a. Rule 5205(b)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during Nasdaq's regular market session;

b. Rule 5205(b)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during Nasdaq's regular market session; or

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c. Rule 5205(b)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only U.S. Component Stocks and at least every 60 seconds with respect to indexes containing Non-U.S. Component Stocks, during Nasdaq's regular market session

If the index value does not change during some or all of the period when trading is occurring on Nasdaq (for example, for indexes of Non-U.S. Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout Nasdaq's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during Nasdaq's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during Nasdaq's regular market session; to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on Nasdaq, then the last official calculated Intraday Indicative Value must remain available throughout Nasdaq's trading hours.

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

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

(F) Creation and redemption. For Index Fund Shares listed pursuant to Rule 5205(b)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. Nasdaq may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Act provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and the rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, each component of an index or portfolio that underlies a series of Index Fund Shares shall meet the following criteria:

- (i) The index or portfolio must consist of Fixed Income Securities;
- (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;
- (iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;
- (iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;
- (v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and
- (vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

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(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(5) Nasdaq may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Act provided: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 5205(b)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that (a) with respect to the Non-U.S. Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Rules 5205(b)(4) and (5) above:

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- (A) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by Nasdaq or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.
- (B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.
- (C) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.
- (7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate each series of Index Fund Shares for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 8:00 p.m.
- (8) Nasdaq may list and trade Index Fund Shares based on one or more foreign or domestic indexes or portfolios. Each issue of Index Fund Shares based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.
- (9) Each series of Index Fund Shares will be listed and traded on Nasdaq subject to application of the following criteria:
- (A) Initial Listing —
- (i) for each series, Nasdaq will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.
 - (ii) Nasdaq will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.
- (B) Continued Listing —
- (i) Nasdaq will consider the suspension of trading in or removal from listing of a series of Index Fund Shares under any of the following circumstances:

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a.if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Index Fund Shares, there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

b. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5205(b) for listing either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Act; or

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

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

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

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

5710. Securities Linked to the Performance of Indexes and Commodities (Including Currencies)

Nasdaq will consider for listing and trading equity index-linked securities (“Equity Index-Linked Securities”) and commodity-linked securities (“Commodity-Linked Securities”) and, together with Equity Index-Linked Securities, “Linked Securities”) that in each case meet the applicable criteria of this Rule. Equity Index-Linked Securities are securities that provide for the payment at

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maturity of a cash amount based on the performance of an underlying equity index or indexes. The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the “Reference Asset”). The terms “Commodity” and “Commodity-Related Security” are defined in Rule 4630.

Linked Securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (1) through (12). Nasdaq will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

- (a) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.
- (b) The issue has a term of not less than one (1) year and not greater than thirty (30) years.
- (c) The issue must be the non-convertible debt of the Company.
- (d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.
- (e) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the Company’s other index-linked note offerings (combined with index-linked note offerings of the Company’s affiliates) listed on a national securities exchange exceeds 25% of the Company’s net worth.
- (f) The Company is in compliance with Rule 10A-3 under the Act.
- (g) Equity Index Criteria—In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either:
 - (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or
 - (2) the index or indexes meet the following criteria:

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- (A) Each component security has a minimum market value 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 value can be at least \$50 million;
- (B) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, 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 trading volume shall be at least 500,000 shares in each of the last six months;
- (C) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;
- (D) In the case of a capitalization-weighted or 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 an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- (E) No underlying component security will represent more than 25% 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% of the weight of the index (60% for an index consisting of fewer than 25 component securities);
- (F) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components;
- (G) All component securities shall be either (A) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act) or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with Nasdaq will not in the aggregate represent more than 20% of the dollar weight of the index.

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(h) Reference Asset Criteria—In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (1) or subparagraph (2) below:

(1) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(2) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which Nasdaq has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (i) the generally accepted spot price for the currency exchange rate in question; or (ii) derived from a market of which (x) is an ISG member or affiliate or with which Nasdaq has a comprehensive surveillance sharing agreement and (y) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (B), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

(i) Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under clause 7(A) or 8(A) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during Nasdaq's regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (i) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be

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calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq's regular market session.

(j) Trading Halts. In the case of Commodity-Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, Nasdaq may halt trading during the day on which such interruption occurs. Nasdaq will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(k) Surveillance Procedures. FINRA will implement on behalf of Nasdaq written surveillance procedures for Linked Securities. Nasdaq will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(l) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

5715. Selected Equity-linked Debt Securities ("SEEDS")

(a) Definition

(1) SEEDS are limited-term, non-convertible debt securities of a Company where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(b) Listing Requirements

Nasdaq will consider listing on the Nasdaq Global Market or Nasdaq Global Select Market Selected Equity-linked Debt Securities (SEEDS), pursuant to 19b-4(e) of the Act, that meet the criteria of this paragraph (b).

(1) Issuer Listing Standards

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

(i) is listed on the Nasdaq Global Market, Nasdaq Global Select or the New York Stock Exchange (NYSE) or is an affiliate of a Company listed on the Nasdaq Global Market, Nasdaq Global Select or the NYSE; provided, however, that the provisions of Rule 5730(b) will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

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

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

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(2) Equity-Linked Debt Security Listing Standards

The issue must have:

- (A) a minimum public distribution of one million SEEDS;
- (B) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations, there is no minimum number of holders;
- (C) a minimum market value of \$4 million; and
- (D) a minimum term of one year.

(3) Minimum Standards Applicable to the Linked Security

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

- (i) have a market value of listed securities of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;
- (ii) have a market value of listed securities of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or
- (iii) have a market value of listed securities of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

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

(C) be issued by:

- (i) a U.S. company; or
- (ii) a non-U.S. company (including a Company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:
 - a. Nasdaq or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);
 - b. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which Nasdaq or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide

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trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or

- c.
 1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.
 2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and
 3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.
- d. If the underlying security to which the SEEDS is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

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

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed:

- (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing (The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded, or, in the case of an ADR, the primary exchange on which the security underlying the ADR is traded. If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined worldwide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing.);

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(ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or

(iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.

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

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

5720. Trust Issued Receipts

(a) Definitions

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

(b) Listing Requirements

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

(2) The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either:

(A) distributed by a Company already included as a component security in the series of Trust Issued Receipts; or

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

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

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- (ii) the component security must be registered under Section 12 of the Act; and
- (iii) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

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

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

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

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

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

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

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

(iii) if the market value of all receipts issued and outstanding is less than \$1 million; or

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

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

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

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(D) Trustee — the following requirements apply:

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

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

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

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

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

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

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

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

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

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

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

5725. Index Warrants

(a) Definitions

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

(b) Listing Requirements

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(1) An Index Warrant may be listed on the Global Market if it substantially meets the following criteria:

- (A) The minimum public distribution shall be at least 1 million warrants.
- (B) The minimum number of Public Holders shall be at least 400.
- (C) The Market Value of the outstanding Index Warrants shall be at least \$4 million.
- (D) The issuer of the Index Warrants must have a minimum tangible net worth in excess of \$150 million.
- (E) The term of the Index Warrant shall be for a period from one to five years.
- (F) Limitations on Issuance — Where a Company has a minimum tangible net worth in excess of \$150 million but less than \$250 million, Nasdaq will not list stock Index Warrants of the Company if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the Company and its affiliates combined that are listed for trading on Nasdaq or another national securities exchange exceeds 25% of the Company's net worth.
- (G) A.M. Settlement — The terms of stock Index Warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.
- (H) Automatic Exercise — All stock Index Warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by Nasdaq (if such warrant issue has not been listed on another national securities exchange).
- (I) Foreign Country Securities — In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts (“ADRs”) thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.
- (J) Changes in Number of Warrants Outstanding — Issuers of stock Index Warrants either will make arrangements with warrant transfer agents to advise Nasdaq

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

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

Any Index Warrant listed pursuant to this paragraph shall not be required to meet the requirements of Rule 5210(h), 5210(a), or 5450. Nasdaq may apply additional or more stringent criteria as necessary to protect investors and the public interest.

5730. Listing Requirements for Securities Not Specified Above (Other Securities)

(a) Initial Listing Requirements

(1) Nasdaq will consider listing on the Global Market any security not otherwise covered by the criteria in the 5400 or 5700 Series, provided the instrument is otherwise suited to trade through the facilities of Nasdaq. Such securities will be evaluated for listing against the following criteria:

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

(i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or

(ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

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

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

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

(2) Issuers of securities listed pursuant to this Rule 5730 must be listed on the Nasdaq Global Market, Nasdaq Global Select Market or the New York Stock Exchange (NYSE)

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or be an affiliate of a Company listed on the Nasdaq Global Market, Nasdaq Global Select Market or the NYSE; provided, however, that the provisions of Rule 5450 will be applied to sovereign issuers of “other” securities on a case-by-case basis.

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

(b) Continued Listing Requirements

(1) The aggregate market value or principal amount of publicly-held units (except index-linked securities that were listed pursuant to Rule 5710) must be at least \$1 million.

(2) Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to Rule 5710(b)(7)(B) if any of the standards set forth in such rule are not continuously maintained, except that:

(A) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(B) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(C) the 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 components 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; and

(D) in a capitalization-weighted or 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 have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an index-linked security that was listed pursuant to Rule 5710(b)(7)(A), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for

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such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

(4) With respect to a Commodity-Linked Security that was listed pursuant to Rule 5710, delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if any of the listing requirements set forth in Rule 5710 that were applicable at the time of the initial listing of the security are no longer being met. Notwithstanding the foregoing, a security will not be delisted due to lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and Nasdaq has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.

(5) Delisting or removal proceedings will also be commenced with respect to any Linked Security listed pursuant to Rule 5710 (unless the Commission has approved the continued trading of the subject security), under any of the following circumstances:

(A) if the aggregate market value or the principal amount of the Linked Security issue publicly held is less than \$400,000;

(B) if the value of the index, composite value of the indexes or the value of the Reference Asset (as applicable) is no longer calculated or widely disseminated as required by Rule 5710(i);

(C) with respect to a Commodity-Linked Security, if the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of this Rule and Rule 5710; or

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

5735. Managed Fund Shares

(a) Nasdaq will consider listing Managed Fund Shares that meet the criteria of Rule 5735.

(b) Applicability. Rule 5735 is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 5735, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on Nasdaq of such securities. Managed Fund Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of Nasdaq.

(1) Nasdaq will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares.

(2) Transactions in Managed Fund Shares will occur throughout Nasdaq’s trading hours.

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(3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Fund Shares is \$0.01.

(4) Surveillance Procedures. Nasdaq will implement written surveillance procedures for Managed Fund Shares.

(5) Creation and Redemption. For Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Managed Fund Share. The term “Managed Fund Share” means a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

(2) Disclosed Portfolio. The term “Disclosed Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

(3) Intraday Indicative Value. The term “Intraday Indicative Value” is the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

(4) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Managed Fund Shares means Nasdaq, an institution, or a reporting service designated by Nasdaq or by the exchange that lists a particular series of Managed Fund Shares (if Nasdaq is trading such series pursuant to unlisted trading privileges) as the official source

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for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

(d) Initial and Continued Listing -- Managed Fund Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(1) Initial Listing -- Each series of Managed Fund Shares will be listed and traded on Nasdaq subject to application of the following initial listing criteria:

(A) For each series, Nasdaq will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Nasdaq will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

(2) Continued Listing -- Each series of Managed Fund Shares will be listed and traded on Nasdaq subject to application of the following continued listing criteria:

(A) Intraday Indicative Value. The Intraday Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on Nasdaq.

(B) Disclosed Portfolio.

(i) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

(ii) The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

(C) Suspension of trading or removal. Nasdaq will consider the suspension of trading in or removal from listing of a series of Managed Fund Shares under any of the following circumstances:

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(i) if, following the initial twelve-month period after commencement of trading on Nasdaq of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Managed Fund Shares for 30 or more consecutive trading days;

(ii) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

(iii) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if Nasdaq is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or

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

(D) Trading Halt. If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. In addition, if Nasdaq becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

(E) Termination. Upon termination of an Investment Company, Nasdaq requires that Managed Fund Shares issued in connection with such entity be removed from listing on Nasdaq.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(e) Limitation of Liability. Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares;

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net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition, or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(f) Disclosures. The provisions of this subparagraph apply only to series of Managed Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. Nasdaq will inform its members regarding application of these provisions of this subparagraph to a particular series of Managed Fund Shares by means of an information circular prior to commencement of trading in such series.

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

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

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

(g) If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the

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composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

5740. Derivative Securities Traded under Unlisted Trading Privileges.

Nasdaq may extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange. Any such security will be subject to all Nasdaq trading rules applicable to NMS Stocks, unless otherwise noted, including provisions of Rules 4120, 4630, the 5400 Series, and the 5700 Series.

(a) Any security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Act (a "UTP Derivative Security") and traded under unlisted trading privileges pursuant to Rule 19b-4(e) under the Act shall be subject to the additional following rules:

(1) Form 19b-4(e). Nasdaq shall file with the Commission a Form 19b-4(e) with respect to each UTP Derivative Security.

(2) Information Circular. Nasdaq shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Rules of Nasdaq that will apply to the new derivative securities product, including Equity Rule 2310; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 8:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Equity Rule 4420) or a similar value.

(3) Product Description.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Derivative Security is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

Nasdaq shall inform Members of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. Nasdaq requires that Members provide all purchasers of UTP Derivative Securities a written description of the terms and characteristics of those securities, in a form approved by Nasdaq or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include a written description with any sales material relating to UTP Derivative Securities that is provided to customers or the public. Any other written

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materials provided by a Member to customers or the public making specific reference to the

UTP Derivative Securities as an investment vehicle must include a statement substantially in the following form:

“A circular describing the terms and characteristics of [the UTP Derivative Securities] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Derivative Securities].”

A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Derivative Securities for such omnibus account will be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to the Member under this Rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular UTP Derivative Securities.

(4) Trading Halts. Trading halts of UTP Derivative Securities shall be governed by Equity Rule 4120.

(5) Limitations on Market Makers. Market makers in a UTP Derivative Security that is a Commodity-Related Security (as defined in Equity Rule 4630) shall comply with Rule 4630.

(6) Surveillance. Nasdaq shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

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5800. Failure to Meet Listing Standards

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on the Nasdaq Stock Market. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are “deficient” with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department’s process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an “exception” to Nasdaq’s listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Nasdaq Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council appeal process.

Finally, the Nasdaq Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of Nasdaq’s final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company’s failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company’s listing will become effective in accordance with the procedures set forth herein, including Rule 5830.

5805. Definitions

- (a) “Adjudicatory Body” or “Adjudicator” means the Hearings Panel, the Listing Council, or the Nasdaq Board, or a member thereof.
- (b) “Advisor” means an individual employed by Nasdaq who is advising an Adjudicatory Body with respect to a proceeding under this section.
- (c) “Hearings Department” means the Hearings Department of the Nasdaq Office of General Counsel.

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- (d) The “Hearings Panel” is an independent panel made up of at least two persons who are not employees or otherwise affiliated with Nasdaq or its affiliates, and who have been authorized by the Nasdaq Board of Directors.
- (e) “Listing Council” means the Nasdaq Listing and Hearing Review Council.
- (f) The “Listing Qualifications Department” is the department of Nasdaq responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company’s securities.
- (g) “Staff” refers to employees of the Listing Qualifications Department.
- (h) “Staff Delisting Determination” or “Delisting Determination” is a written determination by the Listing Qualifications Department to delist a listed Company’s securities for failure to meet a continued listing standard.
- (i) “Decision” means a written decision of an Adjudicatory Body.
- (j) “Public Reprimand Letter” means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders’ interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.
- (k) “Office of Appeals and Review” means the Office of Appeals and Review of the Nasdaq Office of General Counsel.

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters.

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Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

- (1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;
- (2) provide the Company with instructions regarding its obligations to disclose the deficiency under Nasdaq Listing Rules; and
- (3) inform the Company:
 - (A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;
 - (B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;
 - (C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and
 - (D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement through the news media disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. Before release of the public announcement, Companies should provide a copy of the announcement to Nasdaq's MarketWatch Department, the Listing Qualifications Department and the Hearings Department. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

IM-5810-1. Disclosure of Written Notice of Staff Determination

Rule 5810(b) requires that a Company make a public announcement through the news media disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued

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listing requirements, or (iii) a Public Reprimand Letter. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies and hold its annual shareholders' meeting; or
- Staff has determined, under to its discretionary authority in Rule 5100, that the Company's continued listing raises a public interest concern.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 15 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (iv) must be provided generally within 60 calendar days.

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- (i) all quantitative deficiencies from standards that do not provide a compliance period;
- (ii) deficiencies from the standards of Rules 5605 or 5615(a)(4)(C) where the cure period of the Rule is not applicable;
- (iii) deficiencies from the standards of Rules 5620(c), 5630, 5635, 5250(c)(3), 5255(a), 5610, 5615(a)(4)(E), 5615(a)(4)(G), or 5640; or
- (iv) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

IM-5810-2 Staff Review of Deficiencies

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards include:

Rules 5550(b)(1) [Stockholders' Equity] and 5550(b)(3) [Net Income from Continuing Operations]

Rule 5550(a)(3) [Public Holders]

Rule 5550(a)(4) [Publicly Held Shares]

Rules 5350(b)(1)(B) [Publicly Held Shares], 5450(b)(1)(A) [Stockholders' Equity], and 5450(a)(2) [Total Holders]

Rules 5450(b)(3)(A) [Total Assets/Total Revenue], 5450(b)(2)(B) [Publicly Held Shares], and 5450(a)(2) [Total Holders], and

Rules 5460(a)(1) [Publicly Held Shares] and 5460(a)(4) [Public Holders].

(B) Staff Alternatives Upon Review of Plan

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, upon review of a plan of compliance, Staff may either:

- (i) grant an extension of time to regain compliance not greater than 105 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;
- (ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or
- (iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

(C) Timeline for Submission of Compliance Plans

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Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 15 calendar days to submit a plan to regain compliance with Nasdaq's listing standard(s). Within the restrictions of paragraph (B), Staff may extend this deadline, and upon receipt of the Company's plan, may request additional information from the Company to help it determine the Company's ability to regain compliance.

(D) Restrictions on Compliance Plans for Certain Deficiencies

Staff will not accept a plan to achieve compliance with deficiencies in net income from continuing operations or total assets and total revenue, since compliance requires stated levels of net income or assets and revenues during completed fiscal years and therefore can only be demonstrated through audited financial statements. Similarly, a Company may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. A Company may, however, submit a plan that demonstrates current or near-term compliance with the listing requirement relating to stockholders' equity or Market Value of Listed Securities.

(E) Failure to Meet the Terms of a Staff Extension

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

(F) Filing Delinquencies

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 60 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 180 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur

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within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) – (E) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) Bid Price

A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

(i) Global Select Market and Global Market

If a Company listed on The Nasdaq Global Market has not been deemed in compliance prior to the expiration of the 180 day compliance period, it may transfer to The Nasdaq Capital Market, provided that it meets all applicable requirements for initial listing on the Capital Market, other than the minimum bid price requirement. A Company listed on The Nasdaq Global Market transferring to The Nasdaq Capital Market must pay any applicable entry fees set forth in Rule 5920(a). The Company may also request a hearing to remain on The Nasdaq Global Market pursuant to the Rule 5800 Series. Following a transfer to The Nasdaq Capital Market, the Company will be afforded the remainder of any compliance period set forth in Rule 5810(c)(3)(A) or Rule 5810(c)(3)(A)(ii) as if the Company had been listed on The Nasdaq Capital Market. Any time spent in the hearing process will not extend the length of the remaining applicable compliance periods on The Nasdaq Capital Market afforded by this rule.

(ii) Capital Market

If a Company listed on the Capital Market is not deemed in compliance before the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day of the first compliance period, the Company demonstrates that it meets all applicable standards for initial

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listing on the Capital Market (except the bid price requirement) based on the Company's most recent public filings and market information. If the Company has publicly announced information (e.g., in an earnings release) indicating that it no longer satisfies the applicable initial listing criteria, it shall not be eligible for the additional compliance period under this rule.

(B) Market Makers

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

(C) Market Value of Listed Securities (MVLS)

A failure to meet the continued listing requirements for MVLS shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance with the applicable continued listing standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(D) Market Value of Publicly Held Shares (MVPHS)

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance.

Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(E) Independent Director and Audit Committee Rules

If a Company fails to meet the majority board independence requirement in Rule 5605(b)(1) due to one vacancy, or because one director ceases to be independent for reasons beyond his/her reasonable control, the Listing Qualifications Department will promptly notify the Company and inform it has until the earlier of its next annual shareholders meeting or one year from the event that caused the deficiency to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

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If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

(F) Staff Discretion Relating to the Bid Price Requirement

Staff may, in its discretion, require a Company to maintain a bid price of at least \$1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the minimum \$1.00 bid price standard beyond ten business days, Staff will consider the following four factors:

- (i) margin of compliance (the amount by which the bid price is above the \$1.00 minimum standard);
- (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);
- (iii) the Market Maker montage (the number of Market Makers quoting at or above \$1.00 and the size of their quotes); and
- (iv) the trend of the stock price (is it up or down).

(4) Public Reprimand Letter

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

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(d) Additional Deficiencies

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

(A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or

(B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Adjudicatory Body before which its matter is pending.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing

(1) Timely Request Stays Delisting

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination. Subject to the limitation in paragraph (B) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Panel Decision. Requests for hearings should be submitted in writing to the Hearings Department.

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(B) A request for a hearing shall ordinarily stay the delisting action pending the issuance of a Panel Decision. However, if the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination. In that event, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination the Company must submit a hearing fee to The Nasdaq Stock Market, LLC, to cover the cost of the hearing, as follows:

- (A) when the Company has requested a written hearing, \$4,000; or
- (B) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000.

(4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will

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be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

(5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

(6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) grant an exception to the continued listing standards for a period not to exceed 180 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;

(B) Reserved;

(C) suspend and delist the Company's securities;

(D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company

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reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(E) find the Company in compliance with all applicable listing standards; or

(F) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in Rule 5100, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

(d) Hearings Panel Procedures

(1) Panel Decision

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After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the matter for review, or withdraws its call for review, Nasdaq will follow the procedures described in Rule 5830 to submit an application on Form 25 to the SEC to strike the security from listing.

(3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

(4) Procedures Applicable for Recurring Deficiencies

(A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule

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5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to maintain certain levels of stockholders' equity or to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with the requirement that was the subject of the exception, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

5820. Appeal to the Nasdaq Listing and Hearing Review Council

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A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This part describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of \$4,000 to the Nasdaq Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Nasdaq Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

(b) Procedures for Initiating Call for Review

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The Office of Appeals and Review will promptly inform the Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) Composition of Listing Council

The Listing Council is a committee appointed by the Nasdaq Board of Directors pursuant the Nasdaq By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

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(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the Company's securities been trading on Nasdaq at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in Rule 5100, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) The Listing Council may also recommend that the Nasdaq Board consider the matter.

(e) Listing Council Review Process

(1) Review Generally on Written Record

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

(2) Record of Proceedings Maintained

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A record of the documents considered by the Listing Council will be kept by the Nasdaq Office of Appeals and Review.

(3) Written Decision Issued

A written Listing Council Decision meeting the requirements of 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(4) Reconsideration of a Listing Council Decision

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made within seven calendar days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) Notice of Board Right to Call

The Listing Council Decision will provide notice that the Nasdaq Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) Form 25 Notification of Delisting

If the Listing Council determines to delist the Company and the Nasdaq Board does not call the matter for review or withdraws its call for review, Nasdaq will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the security.

5825. Discretionary Review by Nasdaq Board

(a) Review at Discretion of Board

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(F) and 5820(d)(4), or a Listing Council Decision may be called for review by the Board of Directors of Nasdaq (the "Nasdaq Board") solely upon the request of one or more Board members not later than the next Nasdaq Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Nasdaq Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the

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contrary. At the sole discretion of the Nasdaq Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) Scope of Discretion of Board

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the Company's securities been trading on Nasdaq at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to Rule 5100, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

(c) Review on Written Record

If the Nasdaq Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Nasdaq Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Nasdaq Board will be kept by the Nasdaq Office of Appeals and Review.

(d) Board Decision

If the Nasdaq Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Nasdaq Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Nasdaq Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Nasdaq Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Nasdaq Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Nasdaq Board will take immediate effect, unless it specifies to the contrary, and represents the final action of Nasdaq. If the Nasdaq Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Nasdaq Board specifies to the contrary, and Nasdaq will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

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5830. Finality of Delisting Determination

When Nasdaq has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the security from listing. Nasdaq's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

Nasdaq will issue a press release and post a notice on its website announcing its final determination to remove a security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, Nasdaq must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, Nasdaq will file an application on Form 25 with the Commission to delist the security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the security becomes effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

5835. Rules Applicable to Adjudicators and Advisors

(a) Ex Parte Communications

(1) No Ex parte Communications

No member of the staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that proceeding to a Company representative, a member of the staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) No Communications Between Adjudicatory Bodies

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Nasdaq Board or their respective Advisors.

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(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Nasdaq Board or their Advisors.

(3) Members of the Nasdaq Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (1) – (3) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to respond to the communication, and any such response will be placed in the record of the proceeding.

(c) Recusal or Disqualification

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Nasdaq Board, the staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

(1) Exchange of Biographical Information

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Nasdaq Board, as applicable, with names and biographical information of each person that will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Nasdaq Board, the Advisor to the respective Adjudicatory Body may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

(2) Disqualification Procedures

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify will be filed (A) not later than two business days after the party was provided with the name and

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biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Nasdaq Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

(A) Nasdaq Board

The Chair of the Nasdaq Board will have authority to order the disqualification of a Director, and a majority of the Nasdaq Board excluding the Chair of the Nasdaq Board will have authority to order the disqualification of the Chair.

(B) Listing Council

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) Staff of Listing Qualifications Department; Panelist of Hearings Panel

The General Counsel of Nasdaq will have authority to order the disqualification of (i) a member of the staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.

5840. Adjudicatory Process: General Information

(a) Record on Review

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between Nasdaq and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

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If additional issues arising under the Rule 5000 Series are considered, as permitted by the 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

- (1) may request additional information from the Company or the Listing Qualifications Department; and
- (2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Adjudicatory Body's written Decision will include:

- (1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;
- (2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;
- (3) a statement setting forth the findings of fact with respect to the Company;
- (4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and
- (5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

- (1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Nasdaq holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Nasdaq holiday.

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(2) When Staff determines whether a deficiency has occurred with respect to bid price, market value of listed securities, or market value of publicly held shares, the first trading day that the bid price or market value is below required standards is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the bid price, MVLS or MVPHS requirements, the first trading day that the bid price or market value is at or above required standards is included in computing the total number of consecutive trading days.

(3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to Nasdaq in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

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(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Nasdaq Rules; (ii) provides notice to Nasdaq no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with providing notice to Nasdaq, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to Nasdaq simultaneously with its filing with the Commission. Nasdaq will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from Nasdaq, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from Nasdaq, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to Nasdaq along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement through the news media disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. Prior to the release of the public announcement, the Company must provide such disclosure to Nasdaq's MarketWatch Department, the Listing Qualifications Department, and the Hearings Department. The public announcement should be made as promptly as possible, but not more than four business days following receipt of the Decision.

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5900. Company Listing Fees

This section sets forth the required fees for Companies both seeking listing and currently listed on Nasdaq. With certain exceptions, Companies seeking to list on Nasdaq must pay a non-refundable application fee, and an entry fee, which is based on the number of shares being listed. Listed Companies are required to pay annual fees, fees for listing additional shares, and fees for certain corporate changes, such as a change in name or a substitution listing. Please note that the fees related to written interpretations of Nasdaq listing rules can be found in Rule 5600.

5910. The NASDAQ Global Market

(a) Entry Fee

(1) A Company that submits an application to list any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Global Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of listing on the Nasdaq Global Market, except for \$5,000 which represents a non-refundable application fee, and which must be submitted with the Company's application.

Up to 30 million shares \$100,000

30+ to 50 million shares \$125,000

Over 50 million shares \$150,000

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

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

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

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

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

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(7) The fees described in this Rule 5910(a) shall not be applicable with respect to any securities that:

(i) are listed on another national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq Global Market;

(ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated as national market securities under Rule 5220; or

(iii) are listed on another national securities exchange but not listed on Nasdaq, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Nasdaq Global Market.

(8) The fees described in this Rule 5910(a) shall not be applicable to a Company

(i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq; and

(ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(9) A Company that transfers its listing from the Nasdaq Capital Market to the Nasdaq Global Market shall not be required to pay the entry fee described in this Rule 5910(a), provided that:

(i) the Company listed on the Nasdaq Capital Market prior to January 1, 2007; or

(ii) the Company listed on the Nasdaq Capital Market on or after January 1, 2007 and did not qualify for the Nasdaq Global Market at the time of its initial listing on the Nasdaq Capital Market. Any other Company that transfers its listing from the Nasdaq Capital Market to the Nasdaq Global Market shall not be required to pay the application fee, but shall pay the entry fee described in this Rule 5910(a) less the entry fee that was previously paid by the Company to Nasdaq in connection with listing on The Nasdaq Capital Market.

(10) A Company that submits an application for listing on The Nasdaq Capital Market, but prior to listing revises its application to seek listing on The Nasdaq Global Market, is not required to pay the application fee described in this Rule 5910(a) in connection with the revised application.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed on the Nasdaq Global Market shall pay to Nasdaq a fee in connection with the issuance of additional shares in the amount of \$5,000 or \$.01 per additional share, whichever is higher, up to an annual maximum of \$65,000 per Company. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

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(2) The issuer of each class of securities that is a non-U.S. issue that is listed on the Nasdaq Global Market shall pay to Nasdaq a fee in connection with the issuance of additional shares, or in the case of ADRs, the issuance of additional shares underlying the ADRs. The fee in connection with additional shares shall be \$5,000 for any amount of additional shares listed on an annual basis. This fee will be assessed annually based on the Company's total shares outstanding as reported on its periodic reports filed with the SEC. There shall be no fee, however, for issuances of up to 49,999 additional shares per year.

(3) The fee will be calculated and assessed quarterly based on the Company's total shares outstanding as reported on its periodic reports filed with the SEC. In the event that a Company does not timely file a required periodic report with the SEC, the Company must instead provide Nasdaq with the change in its total shares outstanding and the fee will be calculated based on that change. When the Company files its delinquent periodic report, Nasdaq will reconcile the change in shares reported on the periodic report with the number previously provided to Nasdaq and, if necessary, adjust the Company's bill.

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

(5) The fees described in this Rule 5910(b) shall not be applicable to a Company

(i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and

(ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee — Domestic and Foreign Issues

(1) The issuer of each class of securities (not otherwise identified in this Rule 5900 Series) that is a domestic or foreign issue listed on the Nasdaq Global Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares \$30,000

10+ to 25 million shares \$35,000

25+ to 50 million shares \$37,500

50+ to 75 million shares \$45,000

75+ to 100 million shares \$65,500

100+ to 150 million shares \$85,000

Over 150 million shares \$95,000

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

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

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

(5) In lieu of the fees described in Rules 5910(c)(1), 5910(d)(1), and 5910(d)(3), the annual fee shall be \$15,000 for each Company:

(i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq; and

(ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the Company's listing on Nasdaq. If an issuer of such securities ceases to maintain such listing and designation and the securities are instead designated under the Rule 5400 Series, that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except such fee shall be applied to The Nasdaq Global Market fees due for the calendar year of the transfer.

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

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

Up to 10 million ADRs \$21,225

10+ to 25 million ADRs \$26,500

25+ to 50 million ADRs \$29,820

Over 50 million ADRs \$30,000

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

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

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

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

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

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

(e) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(f) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of \$7,500 to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

5920. The Nasdaq Capital Market

(a) Entry Fee

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(1) A Company that submits an application to list any class of its securities (not otherwise identified in this Rule 5900 Series) on the Nasdaq Capital Market, shall pay to Nasdaq a fee calculated on total shares outstanding, according to the following schedule. This fee will be assessed on the date of entry on the Nasdaq Capital Market, except for a non-refundable, application fee of \$5,000, which must be submitted with the Company's application.

Up to 15 million shares \$50,000

Over 15 million shares \$75,000

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

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

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

(5) Total shares outstanding means the aggregate of all classes of equity securities to be listed on the Nasdaq Capital Market as shown in the Company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the Company's appropriate regulatory authority.

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

(7) The fees described in this Rule 5920(a) shall not be applicable with respect to any securities that:

(i) are listed on the Nasdaq Global Market or another national securities exchange, if the issuer of such securities transfers their listing exclusively to the Nasdaq Capital Market;

(ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan applicable to Nasdaq Capital Market securities; or

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- (iii) are listed on another national securities exchange, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Nasdaq Capital Market.
- (8) The fees described in this Rule 5920(a) shall not be applicable to a Company
- (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq; and
 - (ii) that maintains such listing and designation after it lists such securities on Nasdaq.
- (9) A Company that submits an application for listing on The Nasdaq Global Market, but prior to listing revises its application to seek listing on The Nasdaq Capital Market, is not required to pay the application fee described in Rule 5920(a) in connection with the revised application

(b) Additional Shares

- (1) The issuer of each class of security that is a domestic issue which is listed on The Nasdaq Capital Market shall pay to Nasdaq a fee in connection with the issuance of additional shares in the amount of \$5,000 or \$.01 per additional share, whichever is higher, up to an annual maximum of \$65,000 per Company. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.
- (2) The issuer of each class of securities that is a non-U.S. issue that is listed on the Nasdaq Capital Market shall pay to Nasdaq a fee in connection with the issuance of additional shares, or in the case of ADRs, the issuance of additional shares underlying the ADRs. The fee in connection with additional shares shall be \$5,000 for any amount of additional shares listed on an annual basis. This fee will be assessed annually based on the issuer's total shares outstanding as reported on its periodic reports filed with the SEC. There shall be no fee, however, for issuances of up to 49,999 additional shares per year.
- (3) The fee will be calculated and assessed quarterly based on the Company's total shares outstanding as reported on its periodic reports filed with the SEC. In the event that a Company does not timely file a required periodic report with the SEC, the Company must instead provide Nasdaq with the change in its total shares outstanding and the fee will be calculated based on that change. When the Company files its delinquent periodic report, Nasdaq will reconcile the change in shares reported on the periodic report with the number previously provided to Nasdaq and, if necessary, adjust the Company's bill.
- (4) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the additional shares fee prescribed herein.
- (5) The fees described in this Rule 5920(b) shall not be applicable to a Company (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at

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the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(c) Annual Fee

(1) (A) The issuer of each class of securities that is a domestic or foreign issue, other than American Depositary Receipts (ADRs), listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee in the amount of \$27,500.

(B) The issuer of each class of securities that is an ADR listed on The Nasdaq Capital Market shall pay to Nasdaq an annual fee calculated on ADRs outstanding according to the following schedule:

Up to 10 million ADRs \$17,500

Over 10 million ADRs \$21,000

(2) Notwithstanding paragraph (1), the issuer of each class of convertible debentures listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee of \$500 or \$25 per million dollars face amount of debentures outstanding, whichever is higher.

(3) Notwithstanding paragraph (1), a Closed-End Fund listed on the Nasdaq Capital Market shall pay to Nasdaq an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares \$15,000

5+ to 10 million shares \$17,500

10+ to 25 million shares \$20,000

25+ to 50 million shares \$22,500

50+ to 100 million shares \$30,000

100+ to 250 million shares \$50,000

Over 250 million shares \$75,000

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

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

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

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

(7) Notwithstanding paragraph (6), for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market and the Nasdaq Capital Market, as shown in the Company's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) In lieu of the fees described in Rules 5920(c)(1) and 5920(c)(3), the annual fee shall be \$15,000 for each Company (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the Company's listing on Nasdaq. If an issuer of such securities ceases to maintain such listing and designation and the securities instead are designated under the plan governing Nasdaq Capital Market securities, that portion of the fee described in this section attributable to the months following the date of removal shall not be refunded, except such fee shall be applied to The Nasdaq Capital Market fees due for the calendar year of the transfer.

(d) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to Nasdaq and submit the appropriate form as designated by Nasdaq.

(e) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of \$7,500 to Nasdaq and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange other than Nasdaq and not designated by Nasdaq as Nasdaq national market system securities.

IM-5920-1. Foreign Exempt Securities

Rules 5920(b)(4) and 5920(c)(4) provide Nasdaq with the discretion to waive all or part of the additional shares and annual fee otherwise due. Pursuant to that authority, Nasdaq has determined to waive any additional shares or annual fee that otherwise would be due from any foreign Company whose securities or

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underlying ADRs were exempt from registration under Section 12(g) of the Act pursuant to Rule 12g3-2(b) prior to Nasdaq's registration as a national securities exchange and whose securities are also subject to an exemption issued by the Commission that permits the listing the security notwithstanding its failure to be registered pursuant to Section 12(b) of the Act.

5930. Other Securities

(a) Application Fee and Entry Fee

(1) When a Company submits an application to list any SEEDS or Other Securities on the Nasdaq Global Market qualified for listing under Rule 5715 or 5730, it shall pay a non-refundable application fee of \$1,000.

(2) When a Company submits an application to list any SEEDS or Other Securities on the Nasdaq Global Market qualified for listing under Rule 5715 or 5730, it shall pay an entry fee calculated based on total shares outstanding according to the following schedule:

| | |
|--------------------------|----------|
| Up to 1 million shares | \$5,000 |
| 1+ to 2 million shares | \$10,000 |
| 2+ to 3 million shares | \$15,000 |
| 3+ to 4 million shares | \$17,500 |
| 4+ to 5 million shares | \$20,000 |
| 5+ to 6 million shares | \$22,500 |
| 6+ to 7 million shares | \$25,000 |
| 7+ to 8 million shares | \$27,500 |
| 8+ to 9 million shares | \$30,000 |
| 9+ to 10 million shares | \$32,500 |
| 10+ to 15 million shares | \$37,500 |
| Over 15 million shares | \$45,000 |

The applicable entry fee shall be reduced by any entry fees paid previously in connection with the initial listing during the current calendar year of any of the Company's SEEDS and Other Securities on the Nasdaq Global Market.

(3) For the sole purpose of determining the entry fee, total shares outstanding means the aggregate of all classes of SEEDS and Other Securities of the Company to be listed on the Nasdaq Global Market in the current calendar year as shown in the Company's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the Company's appropriate regulatory authority.

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This version of the 5000 series will not be operative until April 13, 2009.

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

(5) If the application is withdrawn or is not approved, the entry fee shall be refunded.

(b) Annual Fee

(1) The issuer of SEEDS or Other Securities qualified under Rule 5715 or 5730 for listing on the Nasdaq Global Market shall pay to Nasdaq an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares \$15,000

5+ to 10 million shares \$17,500

10+ to 25 million shares \$20,000

25+ to 50 million shares \$22,500

Over 50 million shares \$30,000

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

(3) For the sole purpose of determining the annual fee, total shares outstanding means the aggregate of all classes of SEEDS and Other Securities of the Company listed on the Nasdaq Global Market, as shown in the Company's most recent periodic report required to be filed with the Company's appropriate regulatory authority or in more recent information held by Nasdaq.

5940. Portfolio Depository Receipts, Index Fund Shares, and Managed Fund Shares

(a) Entry Fee

(1) When a Company submits an application for listing a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares on the Nasdaq Global Market, it shall pay to Nasdaq a listing fee of \$5,000 (which shall include a \$1,000 non-refundable application fee).

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

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

(b) Annual Fee

(1) The issuer of a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares listed on The Nasdaq Global Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares \$6,500

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| | |
|--------------------------|----------|
| 1+ to 2 million shares | \$7,000 |
| 2+ to 3 million shares | \$7,500 |
| 3+ to 4 million shares | \$8,000 |
| 4+ to 5 million shares | \$8,500 |
| 5+ to 6 million shares | \$9,000 |
| 6+ to 7 million shares | \$9,500 |
| 7+ to 8 million shares | \$10,000 |
| 8+ to 9 million shares | \$10,500 |
| 9+ to 10 million shares | \$11,000 |
| 10+ to 11 million shares | \$11,500 |
| 11+ to 12 million shares | \$12,000 |
| 12+ to 13 million shares | \$12,500 |
| 13+ to 14 million shares | \$13,000 |
| 14+ to 15 million shares | \$13,500 |
| 15+ to 16 million shares | \$14,000 |
| Over 16 million shares | \$14,500 |

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be listed on The Nasdaq Global Market as shown in the Company's most recent periodic report required to be filed with the Company's appropriate regulatory authority or in more recent information held by Nasdaq.

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

IM-5900-1. Waiver of Fees upon Application in Certain Merger Situations

Rules 5910(c)(2), 5910(d)(5), 5920(c)(4), 5930(b)(2), and 5940(b)(3) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 5900 Series. Pursuant to that authority, Nasdaq has determined to waive fees in the following situations involving mergers.

(a) Nasdaq will permit a Nasdaq Company that completes a merger with another Nasdaq Company during the first 90 days of a calendar year to apply for and receive a waiver for 75% of the annual fee assessed to the acquired Nasdaq Company. Companies must apply for the credit no later than June 30 of the year in which the merger occurred.

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(b) Nasdaq will permit a non-Nasdaq Company that completes a merger with a Nasdaq Company that results in the non-Nasdaq Company being the surviving entity and listing on Nasdaq to apply for and receive a waiver of the pro rated annual fee previously paid by the Nasdaq Company for the period of time remaining in the year after the merger.

Applications pertaining to the waivers described in paragraphs (a) and (b) above should be addressed to: Finance Department CCG Billing Operations, The Nasdaq Stock Market Inc., 9600 Blackwell Road, Rockville, Maryland 20850.

IM-5900-4. Waiver of Certain Annual Fees Upon Transfer of a Non-Nasdaq Exchange Listed Security

Rules 5910(c)(2), 5910(d)(5), and 5920(c)(4) provide Nasdaq with the discretion to waive all or part of the annual listing fees prescribed in this Rule 5900 Series. Pursuant to that authority, Nasdaq has determined to waive a portion of the annual fee in the case of securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to Nasdaq; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan governing Nasdaq securities. In the year such a transfer is made, the Company shall receive a credit in the pro-rated amount of any annual listing fees paid to the relevant exchange for the period of time after the transfer, which will be used to offset (and shall not exceed) the fee otherwise payable for that period under Rules 5910(c), 5910(d), or 5920(c). This credit will be applied after the credit described in Rules 5910(c)(5) and 5920(c)(8).

IM-5900-5. Waiver of Fees upon Relisting for Companies Removed for Late Filings

(a) Entry Fees. Pursuant to Nasdaq's authority to waive certain fees, Nasdaq has determined to waive the entry fee (including the application fee) in the following circumstances:

- (1) the Company was suspended and/or delisted from the Nasdaq Stock Market solely for its failure to file a required periodic report with the Commission or other appropriate regulatory authority, pursuant to Rule 5250(c)(1); and*
- (2) the Company has regained compliance with this requirement and applies to relist on Nasdaq within one year of the date it is delisted from Nasdaq.*

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This version of the 5000 series will not be operative until April 13, 2009.

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(b) Annual Fees. A Company that meets the above requirements and relists during the same year that it has previously paid an annual fee will not be subject to a second annual fee in that same year.

IM-5900-6. Waiver of Fees for Companies Emerging from Bankruptcy

(a) Entry Fees. Any Company that lists on Nasdaq upon emerging from bankruptcy is not required to pay the entry fee (including the application fee) set forth in Rules 5910(a) and 5920(a).

(b) Annual Fees.

(1) The annual fee for any Company that lists on the Nasdaq Global Market (including the Nasdaq Global Select Market) upon emerging from bankruptcy will be the minimum annual listing fee specified in Rule 5910(c)(1) for the first (pro rated) year that such a Company is listed and for each of the subsequent two full years.

(2) Any Company listing on Nasdaq upon emerging from bankruptcy that relists during the same year that it had previously paid an annual fee will not be subject to a second annual fee in that year.