

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

4110. Use of Nasdaq on a Test Basis.....	1
4120. Trading Halts .....	1
IM-4120-2. Disclosure of Written Notice of Staff Determination .....	3
4200. Definitions .....	4
IM-4200. Definition of Independence — Rule 4200(A)(15) .....	9
4200-1 Definitions .....	10
4300. Qualification Requirements for Nasdaq Stock Market Securities .....	10
IM-4300. Use of Discretionary Authority .....	11
4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depository Receipts .....	12
4330. Obligation to Provide Information.....	16
4330. Obligation to Provide Information.....	16
4350. Qualitative Listing Requirements for Nasdaq . . . Issuers Except for Limited Partnerships.....	17
IM-4350-1. Interpretive Material Regarding Future Priced Securities.....	23
IM-4350-2. Interpretive Material Regarding the Use of Share Caps to Comply with Rule 4350(i) .....	27
IM-4350-3. Definition of a Public Offering .....	28
IM-4350-4. Board Independence and Independent Committees .....	29
IM-4350-5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements.....	30
IM-4350-6. Applicability .....	31
IM-4350-7. Code of Conduct.....	32
IM-4350-8. Shareholder Meetings.....	33
4350-1. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Capital Market Issuers Except for Limited Partnerships .....	33
4351. Voting Rights.....	34
IM-4351. Voting Rights Policy .....	35
4360. Qualitative Listing Requirements for Nasdaq Issuers That Are Limited Partnerships.....	35

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

4370. Additional Requirements for Nasdaq-Listed Securities Issued by Nasdaq or its Affiliates .....	37
4400. Nasdaq Global Market — Issuer Designation Requirements .....	37
IM-4400. Impact of Non-Designation of Dually Listed Securities .....	38
4410. Applications for Designation .....	38
4420. Quantitative Designation Criteria .....	39
4425. Nasdaq Global Select Market .....	53
IM-4425 Launch of the Nasdaq Global Select Market.....	53
4426. Nasdaq Global Select Market Listing Requirements.....	54
4427. Computations and Definitions .....	55
4430. Limited Partnership Rollup Designation Criteria .....	55
4440. Registration Standards .....	58
4450. Quantitative Maintenance Criteria.....	59
4480. Termination Procedure .....	62
IM-4500-1. Waiver of Fees upon Application in Certain Merger Situations.....	62
IM-4500-3. Reserved .....	63
4510. The Nasdaq Global Market.....	63
4520. The Nasdaq Capital Market .....	66
IM-4520-1. Foreign Exempt Securities .....	69
4530. Other Securities.....	69
4540. Portfolio Depository Receipts and Index Fund Shares.....	70
4550. Written Interpretations of Nasdaq Listing Rules .....	72
4611. Registration as a Nasdaq Market Maker.....	72
4612. Primary Nasdaq Market Maker Standards.....	73
4613. Character of Quotations .....	75
4614. Stabilizing Bids.....	78
4616. Reports .....	79
4617. Normal Business Hours .....	79

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

4618. Clearance and Settlement.....	79
4619. Withdrawal of Quotations and Passive Market Making.....	79
4620. Voluntary Termination of Registration.....	81
4621. Suspension and Termination of Quotations by Association Action.....	83
4622. Termination of Nasdaq Service .....	83
4623. Alternative Trading Systems .....	83
4624. Penalty Bids and Syndicate Covering Transactions .....	85
4625. Obligation to Provide Information.....	85
4801. Definitions .....	86
4802. Purpose and General Provisions .....	87
4803. Staff Review of Deficiency.....	88
IM-4803. Staff Review of Deficiency .....	88
4804. Written Notice of Staff Determination .....	89
4805. Request for Hearing.....	90
4806. The Listing Qualifications Panel .....	90
4807. Review by the Nasdaq Listing and Hearing Review Council .....	91
4808. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council.....	92
4809. Discretionary Review by NASD Board.....	93
4811. Record on Review; Contents of Decisions .....	93
4812. Document Retention Procedures .....	94
4813. Delivery of Documents.....	94
4816. Recusal or Disqualification.....	95
6110. Definitions .....	95
6120. Trade Reporting Participation Requirements .....	97
6430. Suspension of Trading .....	101
6440. Trading Practices .....	101
6951. Definitions .....	102

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

6952. Applicability .....	104
6953. Synchronization of Member Business Clocks .....	104
6954. Recording of Order Information .....	104
6955. Order Data Transmission Requirements.....	108
6956. Violation of Order Audit Trail System Rules.....	109
6957. Effective Date .....	109
7100. Minor Modifications in Charges.....	110

## **4110. Use of Nasdaq on a Test Basis**

Notwithstanding the eligibility standards set forth in the Rule 4300 and 4400 Series, the Association, through its subsidiary The Nasdaq Stock Market Inc., may at any time authorize the use of Nasdaq on a test basis for whatever studies it considers necessary and appropriate.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.

Amended by SR-NASD-94-48 eff. Nov. 2, 1994.

Amended July 20, 1987.

## **4120. Trading Halts**

### **(a) Authority to Initiate Trading Halts**

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

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

(2) halt trading in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) halt trading by: (i) CQS market makers in a CQS security when a national securities exchange imposes a trading halt in that CQS security because of an order imbalance or influx ("operational trading halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security. CQS and Nasdaq market makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b); or

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

(5) halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(A) material news;

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(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 a 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 national securities exchange; or

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

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

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

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

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

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

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

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

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

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

(7)(a) A trading halt initiated under Rule 4120(a)(1), (4), (5) or (6) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 5-minute Quotation Only Period during which market participants may enter quotations in that security in Nasdaq systems. At the conclusion of the 5-minute Quotation Only Period, the security shall be released for trading unless Nasdaq extends the Quotation Only Period for an additional 1-minute period pursuant to subparagraph (c) below. There shall be a period of between zero and 15 seconds (randomly selected) at which point the Quotation Only Period shall end and trading shall resume pursuant to Rule 4703

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(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 Quotation Only Period during which market participants may enter quotes in that security in Nasdaq systems. At the conclusion of the 15-minute Quotation Only Period, the security shall be released for trading unless Nasdaq extends the Quotation Only Period for one, two or three additional 5-minute Quotation Only Periods pursuant to subparagraph (c) below. At the conclusion of the Quotation Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4703.

(c) If at the end of a Quotation Only Period, Nasdaq detects a Liquidity Imbalance in the security, Nasdaq will extend the Quotation Only Period as permitted under subparagraphs (a) and (b) above. Liquidity Imbalances shall be established when:

(1) the Inside Match Prices, as defined in Rule 4703(a)(2), disseminated 15 seconds and immediately prior to the end of the Quotation Only Period differ by greater than (i) 10 percent or (ii) 50 cents (whichever is greater); or

2. the Halt Cross would execute at a price at which higher-priced marketable orders to buy or lower-priced marketable orders to sell would remain unexecuted.

---

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-015 eff. April 20, 2006  
Amended by SR-NASD-2004-172 eff. Nov. 3, 2004.  
Amended by SR-NASD-2004-091 eff. July 27, 2004.  
Amended by SR-NASD-2003-113 eff. Sept. 16, 2003.  
Amended by SR-NASD-2001-75 eff. May 30, 2003.  
Amended by SR-NASD-2002-85 eff. Nov. 25, 2002.  
Amended by SR-NASD-2001-37 eff. July 27, 2001.  
Amended by SR-NASD-2000-48 eff. Nov. 9, 2000.  
Amended by SR-NASD-98-79 eff. Jan. 28, 1999.  
Amended by SR-NASD-97-60 eff. Nov. 26, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended June 9, 1988; Aug. 8, 1988; May 15, 1991.  
Adopted eff. May 5, 1988.

**Selected Notices:** 88-46, 94-98.

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

Rules 4803(a) and 4804(b) require that an issuer make a public announcement through the news media disclosing the receipt of (i) a notice that the issuer does not meet a listing standard set forth in the Rule 4000 Series, and (ii) a . . . Staff Determination . . . to limit or prohibit continued listing of the issuer's securities under Rule 4804(a) as a result of the issuer's failure to comply with the continued listing requirements. . . Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification or the Staff Determination, as applicable. If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4805. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

Rules 4803(a) and 4804(b) do not relieve an issuer 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 issuer consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Adopted by SR-NASD-2000-48 eff. Nov. 9, 2000.

## **4200. Definitions**

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

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

(2) Reserved.

(3) "Association" means the National Association of Securities Dealers, Inc.

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

(5) "CQS market maker" means a dealer that, with respect to a reported security, holds itself out as being willing to buy and sell such security for its own account on a regular and continuous basis otherwise than on a national securities exchange in amounts of less than block size and that is registered as such.

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

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

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

### ***Cross Reference—***

#### *Rule 6300 Series, Consolidated Quotations Service*

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

(10) "Direct Registration Program" means any program by an issuer, directly or through its transfer agent, whereby a shareholder may have securities registered in the shareholder's name on the books of the issuer or its transfer agent without the need for a physical certificate to evidence ownership.

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

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

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

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



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

(i) compensation for board or board committee service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

(B) any of the investors' limited partnership securities are not, as of the date of the filing, reported under a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Act;

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

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

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

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

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

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

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

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

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

(vi) a transaction, except as the Commission may otherwise provide for by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

a transaction reporting plan declared effective before January 1, 1991, by the Commission under Section 11A of the Act\*; if:

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

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

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

(20) "Listed securities" means securities quoted on Nasdaq or listed on a national securities exchange.

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

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

(23) "Member" means a broker or dealer admitted to membership in the Association.

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

(25) "Nasdaq 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 authorized security in the Nasdaq Global Market which (1) satisfies all applicable requirements of the Rule 4300 Series and substantially meets the criteria set forth in the Rule 4400 Series and is subject therefore to a transaction reporting plan approved by the Commission; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; or (4) is an index warrant which substantially meets the criteria set forth in Rule 4420, and has been designated therefore as a national market system security pursuant to Rule 600 of SEC Regulation NMS.

(27) "The Nasdaq Capital Market" is a distinct tier of The Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq Capital Market security.

(28) "Nasdaq Capital Market security" means any authorized security in The Nasdaq Capital Market which (1) satisfies all applicable requirements of the Rule 4300 Series other than a Nasdaq Global Market security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

(29) "The Nasdaq Stock Market" or "Nasdaq" is an electronic securities market comprised of competing market makers whose trading is supported by a communications network linking them to quotation dissemination, trade reporting, and order execution systems. This market also provides specialized automation services for screen-based negotiations of transactions, on-line comparison of transactions, and a range of informational services tailored to the needs of the securities industry, investors and issuers. . . . The Nasdaq Stock Market is operated by The Nasdaq Stock Market, Inc., a wholly-owned subsidiary of the Association.

(30) Reserved.

(a) "Nasdaq Global Select Market" or "NGSM" is a segment of the Nasdaq Global Market comprised of NGM securities that met the requirements for initial inclusion contained in Rules 4425, 4426 and 4427.

(b) "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.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

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

(37) "Substitution Listing Event" means a reverse stock split, re-incorporation or a change in the issuer's place of organization, the formation of a holding company that replaces a listed company, reclassification or exchange of an issuer'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 receive a share-for-share interest in the new company without any change in their equity position or rights.

(38) "Transaction costs" means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

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

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

---

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-116 eff. Dec. 6, 2005.  
Amended by SR-NASD-2004-162 eff. Nov. 1, 2005.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-086 eff. June 1, 2004.  
Amended by SR-NASD-2004-080 eff. May 18, 2004.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003.  
Amended by SR-NASD-2002-141 eff. Nov. 4, 2003.  
Amended by SR-NASD-2003-75 eff. July 9, 2003.

Amended by SR-NASD-2001-84 eff. June 1, 2002.  
Amended by SR-NASD-2001-14 eff. June 29, 2001.  
Amended by SR-NASD-99-48 eff. Dec. 14, 1999.  
Amended by SR-NASD-97-16 eff. Feb. 23, 1998.  
Amended by SR-NASD-97-51 eff. Nov. 26, 1997.  
Amended by SR-NASD-97-15 eff. Mar. 4, 1997.  
Amended by SR-NASD-95-37 eff. Sept. 28, 1995.  
Amended by SR-NASD-95-19 eff. July 3, 1995.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.  
Amended July 20, 1987; Jan. 9, 1989; June 11, 1992.

**Selected Notices:** 94-70, 95-64, 95-82.

## **IM-4200. Definition of Independence — Rule 4200(A)(15)**

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

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

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

Paragraph (B) of the Rule is generally intended to capture situations where a payment is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director or political contributions to the campaign of a director or a Family Member of the director would be considered under paragraph (B) of the Rule. Subparagraph (v) clarifies that a loan from a financial institution that was exempt from specific disclosure pursuant to Instruction 3 to SEC Regulation S-K, Item 404(c) will not preclude a finding of director independence. Subparagraph (vi) clarifies that certain payments from financial institutions will not preclude a finding of director independence. In particular, subparagraph (vi) is intended to capture standard, non-preferential payments made by financial institutions in the ordinary course of business such as interest payments made by a bank on deposits, certificates of deposits, or savings bonds. Furthermore, subparagraph (vi) is intended to capture technical "payments" made by a financial institution to its customers when the financial institution acts as an agent for its customers. For example, when a brokerage firm receives dividends for securities held by a customer, it will make a "payment" of the dividend amount to that customer. Likewise, when a brokerage firm executes a customer's order to sell the customer's securities, it will make a "payment" of the proceeds to the customer. Subparagraph (vi) clarifies that agency payments, such as those described above, shall not preclude a finding of director independence.

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

Under paragraph (D), a director who is, or who has a Family Member who is, an executive officer of a charitable organization may not be considered independent if the company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000. However, Nasdaq encourages

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

companies to consider other situations where a director or their Family Member and the company each have a relationship with the same charity when assessing director independence.

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-086 eff. June 1, 2004.  
Amended by SR-NASD-2004-080 eff. May 18, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003.  
Adopted by SR-NASD-2002-141 eff. Nov. 4, 2003.

## **4200-1 Definitions**

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

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

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

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

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

(C) a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home;

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-069 eff. May 19, 2004.  
Adopted by SR-NASD-2002-138 eff. Nov. 12, 2003.

## **4300. Qualification Requirements for Nasdaq Stock Market Securities**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, has broad discretionary authority over the initial and continued inclusion 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 inclusion, apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq. In all circumstances where the Listing Department (as defined in Rule 4801) exercises its authority under Rule 4300, the Listing Department shall issue a Staff Determination under Rule 4804, and in all circumstances where an Adjudicatory Body (as defined in Rule 4801) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

### **IM-4300. Use of Discretionary Authority**

In order to further issuers' understanding of Rule 4300, Nasdaq is adopting 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 4300 to deny initial or continued listing to an issuer when an individual with a history of regulatory misconduct is associated with the issuer. Such individuals are typically an officer, director, substantial security holder (as defined in Rule 4350(i)(5)), or consultant to the issuer. In making this determination, Nasdaq shall consider a variety of factors, including the severity of the violation; whether it involved fraud or dishonesty; whether it was securities-related; whether the investing public was involved; when the violation occurred; how the individual has been employed since the violation; whether there are continuing sanctions against the individual; whether the individual made restitution; whether the issuer has taken effective remedial action; and the totality of the individual's relationship to the issuer.

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 issuer, if taken, would allay that concern. Examples of such remedial measures could include the individual's resignation from officer and director positions; divestiture of stock holdings; terminations of contractual arrangements between the issuer and the individual; or the establishment of a voting trust surrounding the individual's shares. 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 makes such a determination, the issuer may seek review of that determination through the procedures set forth in the Rule 4800 Series.

Nasdaq may also use its discretionary authority, for example, when an issuer files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when an issuer's independent accountants issue a disclaimer opinion 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 shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on Nasdaq or such an exchange. Based on such review, and in accordance with the Rule 4800 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 shall be made on a case-by-case basis as necessary to protect investors and the public interest.

Although Nasdaq has broad discretion under Rule 4300 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 inclusion, which may be granted solely pursuant to rules explicitly providing such authority.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2004-125 eff. Aug. 26, 2005.

## **4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts**

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a) A security of a foreign issuer, an ADR or similar security issued in respect of a security of a foreign issuer, other than a newly issued security, shall be considered for inclusion provided that it is registered pursuant to Section 12(g) of the Act.

(b) A new issue of foreign securities conducted on a firm commitment basis shall be considered for inclusion on the day that its registration statement is declared effective by the Commission. A new issue of foreign securities conducted on a "best efforts" basis shall be considered for inclusion upon the closing of the offering. Qualification under this paragraph shall automatically terminate 120 days after the last day of the issuer's fiscal year during which the registration statement became effective.

(c) A foreign issuer whose securities or underlying ADR's were included in Nasdaq on or before October 5, 1983, and whose securities are exempt from registration under Section 12(g) of the Act pursuant to SEC Rule 12g3-2(b), shall continue to be included in Nasdaq, provided that all applicable requirements of SEC Rule 12g3-2(b) are met.

(d) Notwithstanding its exemption from registration pursuant to SEC Rule 12g3-2(b), a foreign security or ADR shall not be qualified for inclusion if:

(1) the issuer of the security or the security underlying the ADR fails to make available to its shareholders and Nasdaq on a timely basis an annual balance sheet and statement of operations prepared in accordance with the generally accepted accounting practices of the issuer's country of domicile, including certification, if applicable; or

(2) the principal marketplace of the issuer's securities fails to coordinate regulatory activities with Nasdaq in a manner sufficient to assure a fair and orderly market in the security and the protection of investors and the public interest.

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

**\* Changes to paragraph (e) pursuant to SR-NASD-2004-147 do not become effective until May 29, 2006.\***

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

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

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

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

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

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



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

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

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

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

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

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

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

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

(5) There shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion, such shares shall have a market value of at least \$5 million. For continued inclusion, such shares shall have a market value of at least \$1 million. In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

having a market value of at least \$2 million for initial inclusion and 100,000 publicly held shares having a market value of \$500,000 for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock. Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

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

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

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

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

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

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

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

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

(14) Except in unusual circumstances, the issuer shall make prompt disclosure to the public in the United States through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The issuer shall, prior to the release of the information, provide notice of such disclosure to Nasdaq if the information involves any of the events set forth in IM-4120-1.\*

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

(19) Reserved.

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

(21–25) Reserved.

(26) The issuer shall notify Nasdaq of a Substitution Listing Event (other than a re-incorporation or a change to an issuer'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 an issuer's place of organization, an issuer shall notify Nasdaq as soon as practicable after such event has been implemented by filing the appropriate form as designated by Nasdaq. Issuers shall also pay the appropriate fee associated with Substitution Listing Events. The Substitution Listing Event fee shall not apply to securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities.

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

---

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-162 eff. Nov. 1, 2005.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-147 eff. Jan. 1, 2005.  
Amended by SR-NASD-2004-109 eff. Sept. 28, 2004.  
Amended by SR-NASD-2002-140 eff. June 30, 2003.  
Amended by SR-NASD-2002-89 eff. Jan. 14, 2003.  
Amended by SR-NASD-2002-85 eff. Nov. 25, 2002.  
Amended by SR-NASD-2001-84 eff. June 1, 2002.  
Amended by SR-NASD-2002-16 eff. Feb. 11, 2002.  
Amended by SR-NASD-2001-38 eff. Aug. 3, 2001.  
Amended by SR-NASD-2001-14 eff. June 29, 2001.  
Amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Amended by SR-NASD-99-69 eff. Oct. 11, 2000.  
Amended by SR-NASD-99-61 eff. Jan. 20, 2000.  
Amended by SR-NASD-99-48 eff. Dec. 14, 1999.  
Amended by SR-NASD-98-79 eff. Jan. 28, 1999.  
Amended by SR-NASD-97-51 eff. April 1, 1998.

Amended by SR-NASD-98-16 eff. Feb. 23, 1998.  
Amended by SR-NASD-97-91 eff. Jan. 28, 1998.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-97-03 eff. Jan. 31, 1997.  
Amended by SR-NASD-96-09 eff. May 2, 1996.  
Amended by SR-NASD-94-45 eff. Dec. 19, 1994.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-94-19 eff. June 3, 1994.  
Amended by SR-NASD-93-04 eff. Apr. 15, 1994.  
Amended July 20, 1987; June 9, 1988; Aug. 8, 1988; Apr. 26, 1990; Aug. 30, 1991; Feb. 16, 1993.

**Selected Notice:** 83-19.

### **4330. Obligation to Provide Information**

Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. . . . An issuer may be delisted 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.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2002-78 eff. July 12, 2002.  
Amended by SR-NASD-2001-01 eff. March 13, 2001.  
Amended by SR-NASD-97-16 eff. Feb. 23, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-94-19 eff. June 3, 1994.  
Amended July 20, 1987; May 4, 1993.

**Selected Notices:** 85-20, 85-49, 85-72, 87-46.

### **4330. Obligation to Provide Information**

...  
Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. . . . An issuer may be delisted 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.

...  
Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2002-78 eff. July 12, 2002.  
Amended by SR-NASD-2001-01 eff. March 13, 2001.  
Amended by SR-NASD-97-16 eff. Feb. 23, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-94-19 eff. June 3, 1994.  
Amended July 20, 1987; May 4, 1993.

**Selected Notices:** 85-20, 85-49, 85-72, 87-46.

## **4350. Qualitative Listing Requirements for Nasdaq . . . Issuers Except for Limited Partnerships.**

### **(a) Applicability**

(1) Foreign Private Issuers. A foreign private issuer may follow its home country practice in lieu of the requirements of Rule 4350, provided, however, that such an issuer shall: comply with Rules 4350(b)(1)(B), 4350(j) and 4350(m), have an audit committee that satisfies Rule 4350(d)(3), and ensure that such audit committee's members meet the independence requirement in Rule 4350(d)(2)(A)(ii). A foreign private issuer that follows a home country practice in lieu of one or more provisions of Rule 4350 shall disclose in its annual reports filed with the Commission each requirement of Rule 4350 that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. In addition, a foreign private issuer making its initial public offering or first U.S. listing on Nasdaq shall make the same disclosures in its registration statement.

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

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

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

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

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

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

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

A company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) on the same schedule as it is permitted to phase in its compliance with the independent audit committee requirement pursuant to SEC Rule 10A-3(b)(1)(iv)(A). Accordingly, a company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent committee requirements set forth in Rule 4350(c) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Furthermore, a company listing in connection with its initial public offering shall have twelve months from the date of listing to comply with the majority independent board requirement in Rule 4350(c). It should be noted, however, that pursuant to SEC Rule 10A-3(b)(1)(iii) investment companies are not afforded the exemptions under SEC Rule 10A-3

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(b)(1)(iv) . Issuers may choose not to adopt a compensation or nomination committee and may instead rely upon a majority of the independent directors to discharge responsibilities under Rule 4350(c). For purposes of Rule 4350 other than Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. For purposes of Rule 4350(d)(2)(A)(ii) and Rule 4350(m), a company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in SEC Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

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

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

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

Rule 4350(n), requiring issuers to adopt a code of conduct, shall be effective May 4, 2004.

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

The remainder of Rule 4350(a) and Rule 4350(b) are effective November 4, 2003.

**(b) Distribution of Annual and Interim Reports**

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

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

(2) Each issuer which is subject to SEC Rule 13a-13 shall make available copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the issuer shall file one copy of the report with Nasdaq in addition to filing its Form 10-Q pursuant to Rule 4310(c)(14). The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

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

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

**(c) Independent Directors**

(1) A majority of the board of directors must be comprised of independent directors as defined in Rule 4200. The company must disclose in its annual proxy (or, if the issuer does not file a proxy, in its Form

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

10-K or 20-F) those directors that the board of directors has determined to be independent under Rule 4200. If an issuer fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, the issuer shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. An issuer relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstance that caused the non-compliance.

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

**(3) Compensation of Officers**

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

(i) a majority of the independent directors, or

(ii) a compensation committee comprised solely of independent directors. The chief executive officer may not be present during voting or deliberations.

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

(i) a majority of the independent directors, or

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

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

**(4) Nomination of Directors**

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

(i) a majority of the independent directors, or

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

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

(C) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.

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

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

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

**Cross References—IM-4200, Definition of Independence — Rule 4200(a)(15)**

**Cross References—IM-4350-4, Board Independence and Independent Committees**

**(d) Audit Committee**

**(1) Audit Committee Charter**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

**(2) Audit Committee Composition**

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

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

**(3) Audit Committee Responsibilities and Authority**

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

**(4) Cure Periods**

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

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

**Cross References—** *IM-4200, Definition of Independence — Rule 4200(a)(15)*

**Cross References—** *IM-4350-4, Board Independence and Independent Committees*

**(e) Shareholder Meeting**

Each issuer 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 issuer's fiscal year-end.



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

**(f) Quorum**

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

**(g) Solicitation of Proxies**

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

**(h) Conflicts of Interest**

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

**(i) Shareholder Approval**

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

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

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

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

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

(iv) issuances to a person not previously an employee or director of the company, or following a bonafide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

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

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

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

(ii) where, due to the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, other than a public offering for cash: a. the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or b. the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares or common stock outstanding before the issuance of the stock or securities; or

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

(B) reliance by the company on this exception is expressly approved by the audit committee or a comparable body of the board of directors 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 issuer is relying on a financial viability exception to the shareholder 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 issuer 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.

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

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

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

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

(7) 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.

**Cross References—** *IM-4350-1, Future Priced Securities*

**Cross References—** *IM-4350-2, Interpretative Material Regarding the use of Share Caps to Comply with Rule 4350(i)*

**Cross References—** *IM-4350-3, Definition of Public Offering*

**Cross References—** *IM-4350-5, Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements*

**(j) Listing Agreement**

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

**(k) Auditor Registration**

Each listed issuer 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].

**(l) Direct Registration Program**

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

**(m) Notification of Material Noncompliance**

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

**(n) Code of Conduct**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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.

**Cross Reference— IM-4350-7 Code of Conduct**

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-073 eff. March 30, 2006.  
Amended by SR-NASD-2005-006 eff. Jan. 1, 2006.  
Amended by SR-NASD-2005-116 eff. Dec. 6, 2005.  
Amended by SR-NASD-2005-082 eff. Oct. 13, 2005.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2005-003 eff. March 23, 2005.  
Amended by SR-NASD-2005-018 eff. Jan. 31, 2005.  
Amended by SR-NASD-2004-105 eff. Oct. 20, 2004.  
Amended by SR-NASD-2004-069 eff. May 19, 2004.  
Amended by SR-NASD-2004-080 eff. May 18, 2004.  
Amended by SR-NASD-2004-070 eff. May 6, 2004.  
Amended by SR-NASD-2002-139 eff. May 4, 2004.  
Amended by SR-NASD-2004-070 eff. Apr. 23, 2004.  
Amended by SR-NASD-2002-80 eff. Jan. 14, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003.  
Amended by SR-NASD-2002-138 eff. Nov. 12, 2003.  
Amended by SR-NASD-2002-141 eff. Nov. 4, 2003.  
Amended by SR-NASD-2002-77 eff. Nov. 4, 2003.  
Amended by SR-NASD-2003-130 eff. Oct. 14, 2003.  
Amended by SR-NASD-2002-140 eff. June 30, 2003.  
Amended by SR-NASD-2002-20 eff. March 20, 2002.  
Amended by SR-NASD-2001-48 eff. March 7, 2002.  
Amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Amended by SR-NASD-99-69 eff. Oct. 11, 2000.  
Amended by SR-NASD-99-48 eff. Dec. 14, 1999.  
Amended by SR-NASD-97-51 eff. April 1, 1998.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-94-45 eff. Dec. 19, 1994.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.  
Amended by SR-NASD-94-38 eff. Sept. 20, 1994.  
Amended eff. Jan. 9, 1989. July 19, 1990. Oct. 5, 1990.  
Adopted by SR-NASD-86-27 eff. June 23, 1987.

**Selected Notice:** 91-33.

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

### **Summary**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

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

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

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

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

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice should contact The Nasdaq Stock Market, Office of General Counsel at (202) 728-8294 or Listing Qualifications Department at (202) 496-2500. The Nasdaq Stock Market will provide an issuer with a written interpretation of the application of NASD Rules to a specific transaction, upon request of the issuer.

**How the Rules Apply**

*Shareholder Approval*

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

Each issuer shall require shareholder approval ... prior to the issuance of designated 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.<sup>1</sup>

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

Some Future Priced Securities may contain features to obviate the need for shareholder approval by:

- (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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<sup>2</sup>; or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rule 4350(i)(1)(B) if the issuance will result in a change of control.

\* \* \*

*Voting Rights*

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

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

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

\* \* \*

*The Bid Price Requirement*

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

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement.<sup>3</sup>

\* \* \*

*Listing of Additional Shares*

NASD Rule 4310(c)(17) provides:

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

\* \* \*

*Public Interest Concerns*

NASD Rule 4300 provides:

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

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, has broad discretionary authority over the initial and continued inclusion 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 inclusion, apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

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

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

\* \* \*

*Reverse Merger*

NASD Rule 4340 provides:

An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a "Reverse Merger"). In determining whether a Reverse Merger has occurred, Nasdaq 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 issuer. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a Reverse Merger.<sup>4</sup> It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

could result in a Reverse Merger with the holders of the Future Priced Securities. In such event, an issuer may be required to re-apply for initial inclusion and satisfy all initial inclusion requirements.

<sup>1</sup> 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.

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

<sup>3</sup> If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

<sup>4</sup> This provision is designed to address situations where a company attempts to obtain a "backdoor listing" on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2004-147 eff. Jan. 1, 2005.  
Amended by SR-NASD-2002-20 eff. March 20, 2002.  
Amended by SR-NASD-2001-01 eff. March 13, 2001.  
Amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Adopted by SR-NASD-99-14 eff. Apr. 27, 1999.

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

Rule 4350(i) limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities.<sup>1</sup> 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.<sup>2</sup>

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

Issuers having questions regarding this policy are encouraged to contact The Nasdaq Stock Market, Listing Qualifications Department at (877) 536-2737, which will provide a written interpretation of the application of Nasdaq Rules to a specific transaction, upon prior written request of the issuer.

<sup>1</sup> An exception to this rule is available to issuers when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise. Rule 4350(i)(2). However, a share cap is not permissible in conjunction with the financial viability exception provided in Rule 4350(i)(2), because the application to Nasdaq and the notice to shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.

<sup>2</sup> While Nasdaq's experience is that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in Rule 4350(i)(1)(C)(i).

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2002-20 eff. March 20, 2002.

### **IM-4350-3. Definition of a Public Offering**

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

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

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2002-20 eff. March 20, 2002.  
Adopted by SR-NASD-2000-50 eff. Nov. 13, 2000.



## **IM-4350-4. Board Independence and Independent Committees**

### **Independent Directors and Independent Committees — Rule 4350(c)**

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

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

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

### **Independent Director Oversight of Director Nominations**

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

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

### **Controlled Company Exemption**

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

### **Audit Committees — Rule 4350(d)**

#### **Audit Committee Charter**

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

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

#### **Audit Committee Composition**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

financial expert under Item 401(h) of Regulation S-K or Item 401(e) of Regulation S-B is presumed to qualify as a financially sophisticated audit committee member under Rule 4350(d)(2)(A).

**The Audit Committee Responsibilities and Authority**

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

**Executive Officers**

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2002-141 eff. Nov. 4, 2003.

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

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

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

(1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) any material expansion of the class of participants eligible to participate in the plan; and

(4) any expansion in the types of options or awards provided under the plan.

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

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

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

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

requires that such issuances must be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2003-130 eff. Oct. 14, 2003.  
Adopted by SR-NASD-2002-140 eff. June 30, 2003.

## **IM-4350-6. Applicability**

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2005-018 eff. Jan. 31, 2005.  
Amended by SR-NASD-2004-069 eff. May 19, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003  
Adopted by SR-NASD-2002-138 eff. Nov. 12, 2003.

## **IM-4350-7. Code of Conduct**

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

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

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the company, as when the individual receives improper personal benefits as a result of his or her position with the company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the company. Also, the disclosures an issuer makes to the Commission are the essential source of information

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

about the company for regulators and investors — there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board and must be disclosed to shareholders, along with the reasons for the waiver. All issuers, other than foreign private issuers, must disclose such waivers in a Form 8-K within four business days. Foreign private issuers must disclose such waivers either in a Form 6-K or in the next Form 20-F or 40-F. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the company and its shareholders to the greatest extent possible.

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2005-003 eff. March 23, 2005.  
Amended by SR-NASD-2004-105 eff. Oct. 20, 2004.  
Adopted by SR-NASD-2003-139 eff. May 4, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003.

## **IM-4350-8. Shareholder Meetings**

Rule 4350(e) requires that each issuer 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 issuer'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 an issuer listing the following types of securities: securities listed pursuant to Rule 4420(f) (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 listed pursuant to Rule 4420(i); Index Fund Shares listed pursuant to Rule 4420(j); and Trust Issued Receipts listed pursuant to Rule 4420(l). Notwithstanding, if the issuer also lists common stock or voting preferred stock, or their equivalent, the issuer must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2005-073 eff. March 30, 2006.

## **4350-1. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Capital Market Issuers Except for Limited Partnerships**

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

### **(a) Applicability**

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

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

**(c) Independent Directors**

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

**(d) Audit Committee**

**(1) Audit Committee Charter**

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

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

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

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

**(2) Audit Committee Composition**

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

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

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

**(h) Conflicts of Interest**

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

Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-069 eff. May 19, 2004.  
Amended by SR-NASD-2003-172 eff. Nov. 24, 2003.  
Adopted by SR-NASD-2002-138 eff. Nov. 12, 2003.

## **4351. Voting Rights**

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

**Cross Reference—**

*IM-4350-1, Future Priced Securities*

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2000-62 eff. Oct 18, 2000.  
Adopted by SR-NASD-99-45 eff. Dec. 19, 1994.

## **IM-4351. Voting Rights Policy**

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

### **Issuers with Dual Class Structures**

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

### **Consultation with The Nasdaq Stock Market**

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

### **Review of Past Voting Rights Activities**

In reviewing an application for initial qualification for inclusion of a security in The Nasdaq Stock Market, Nasdaq will review the issuer's past corporate actions to determine whether another self-regulatory organization ("SRO") has found any of the issuer's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, Nasdaq may take any appropriate action, including the denial of the application or the placing of restrictions on such qualification for inclusion. Nasdaq will also review whether an issuer seeking initial qualification for inclusion of a security in Nasdaq has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, Nasdaq will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

### **Non-U.S. Companies**

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2000-62 eff. Oct 18, 2000.

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

### **(a) Applicability**

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

**(b) Distribution of Annual and Interim Reports**

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

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

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

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

**(c) Corporate General Partner/Independent Directors**

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

**(d) Audit Committee**

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

**(e) Partner Meetings**

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

**(f) Quorum**

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

**(g) Solicitation of Proxies**

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

**(h) Listing Agreement**

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



**(i) Conflict of Interest**

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2005-006 eff. Jan. 1, 2006.  
Amended by SR-NASD-2001-48 eff. March 7, 2002.  
Renumbered and amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Amended by SR-NASD-2000-31 eff. Aug. 22, 2000.  
Amended by SR-NASD-97-16 eff. Feb. 23, 1998.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.  
Amended eff. Oct. 31, 1993.  
Adopted by SR-NASD-86-27 eff. June 23, 1987.

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

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

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

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

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

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

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2004-169 eff. Feb. 2, 2005.

**4400. Nasdaq Global Market — Issuer Designation Requirements**

Pursuant to SEC Rule 11Aa2-1, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission under which securities satisfying the requirements of this Rule 4400 Series are covered by the transaction reporting plan and transactions in such securities are subject to the transaction reporting provisions of the Rule 4630 Series.

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.

## **IM-4400. Impact of Non-Designation of Dually Listed Securities**

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

While Nasdaq shall certify such dually listed securities for listing on the NGM, Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system plans ("CQ and CTA Plans"), 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 the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. 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 NASD rules as a result of a single security being both 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 NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas NASD Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Adopted by SR-NASD-2004-029 eff. Feb. 12, 2004.

## **4410. Applications for Designation**

(a) Application for designation shall be on a form supplied by Nasdaq and signed by a corporate officer of the issuer. Compliance with the designation criteria will be determined on the basis of information filed with the appropriate regulatory authority and the records of Nasdaq as of the application date. Nasdaq may require the issuer to submit such other information as is relevant to a determination of designation as a national market system security, including information required by paragraph (c) below.

(b) Designation of a security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation shall be determined by Nasdaq giving due regard to the requirements of Nasdaq, the media and market makers. Effectiveness of designation may be delayed upon written request by the issuer. An issuer which has been determined to be qualified but is pending effectiveness shall not be required to meet the designation criteria prior to effectiveness.

...

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. June 30, 1992.

## **4420. Quantitative Designation Criteria**

In order to be designated for the Nasdaq Global Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) or (m) below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq Global Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

(6) The issuer has:

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

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

**(d) Rights and Warrants**

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

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

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

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

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

**(e) Computations**

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

**(f) Other Securities**

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

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

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

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

(3) Prior to the commencement of trading of securities designated 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 member firm compliance responsibilities and requirements when handling transactions in such securities.

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(1) Issuer Listing Standards

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

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

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

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

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

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

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

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

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

(3) Minimum Standards Applicable to the Linked Security

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

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

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

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

(B) be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq Global Market or a 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. the Association 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 the Association or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of designation; or

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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 worldwide 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 designation; 1\* (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 designation; (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 designation.

(B) If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then The Nasdaq Stock Market, 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 designated pursuant to this subsection, the Association or its subsidiaries will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.

**(h) Units**

(1) Initial and Continued Inclusion Requirements

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(2) Minimum Inclusion Period and Notice of Withdrawal

In the case of units, the minimum period for inclusion of the units shall be 30 days from the first day of inclusion, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Issuers and underwriters seeking to withdraw units from inclusion 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. An issuer shall also disclose when a component of the unit is separately listed on Nasdaq. These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, any change in the terms of the unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of the components within the unit. Such public notification shall be made as soon as practicable in relation to the effective date of the change.

**(i) Portfolio Depository Receipts**

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

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

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

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

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

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

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

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

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

Nasdaq requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or Nasdaq. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]."

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

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

(3) Nasdaq may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each of the following criteria is satisfied:

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

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

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

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

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

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

(B) Index Methodology and Calculation.

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

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

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

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

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

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

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

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

**(j) Index Fund Shares**

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

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

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

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

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

(3) Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

(B) Index Methodology and Calculation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

**(k) Quantitative Designation Criteria — Preferred Stock and Secondary Classes of Common Stock**

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

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

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

**(l) Trust Issued Receipts**

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

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

(3) The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(A) the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

- (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;
- (ii) if the Trust has fewer than 50,000 receipts issued and outstanding;
- (iii) if the market value of all receipts issued and outstanding is less than \$1 million; or
- (iv) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

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

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

(D) Trustee — the following requirements apply:

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

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

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

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

(8) Nasdaq may approve a series of Trust Issued Receipts for trading, whether by listing or trading over-the-counter, 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 a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

**(m) Index-Linked Securities**

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such 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 Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (9). Nasdaq will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 index-linked securities, provided:

(1) 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 the minimum public distribution of the security shall be 1,000,000 units with a minimum of 400 public holders, unless the security is traded in \$1,000 denominations, in which case there is no minimum number of holders.

(2) The issue has a term of not less than one (1) year and not greater than ten (10) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer 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 issuer 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 issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria—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 (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 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 (B) the index or indexes meet the following criteria:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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);

(v) 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;

(vi) Each component security shall be issued by a 1934 Act reporting company which is listed on Nasdaq or a national securities exchange and shall be an "NMS" stock," as defined in SEC Rule 600 of Regulation NMS under the 1934 Act; and

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(vii) Foreign country securities or American Depositary Receipts (“ADRs”) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(8) Index Methodology and Calculation— (i) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (ii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (iii) 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. (iv) The current value of an index will be widely disseminated at least every 15 seconds, except as provided in the next clause (v). (v) 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 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 BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (vi) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(9) Surveillance Procedures. Nasdaq will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(10) Index-linked securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, index-linked securities shall be deemed and treated as Other Securities.

---

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

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2006-001 eff. Jan. 23, 2006.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2005-024 eff. May 26, 2005.  
Amended by SR-NASD-2004-81 eff. May 17, 2004.  
Amended by SR-NASD-2004-73 eff. May 7, 2004.  
Amended by SR-NASD-2003-32 eff. April 21, 2003.  
Amended by SR-NASD-2002-89 eff. Jan. 14, 2003.  
Amended by SR-NASD-2001-84 eff. June 1, 2002.  
Amended by SR-NASD-2002-45 eff. May 13, 2002.  
Amended by SR-NASD-2002-16 eff. Feb. 11, 2002.  
Amended by SR-NASD-2001-14 eff. June 29, 2001.  
Amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Amended by SR-NASD-99-69 eff. Oct. 11, 2000.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-96-01 eff. Mar. 20, 1996.  
Amended by SR-NASD-95-37 eff. Sept. 28, 1995.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-94-49 eff. Sept. 30, 1994.



Amended by SR-NASD-93-15 eff. Sept. 29, 1993.  
Amended eff. Jan. 9, 1989; June 30, 1992; June 15, 1993.

**Selected Notices:** 95-82.

## **4425. Nasdaq Global Select Market**

(a) An issuer that applies for listing on the Nasdaq Global Market and meets the requirements for initial listing contained in Rule 4426 shall be listed on the Nasdaq Global Select Market.

(b) Each October, beginning in October 2007, 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 4426 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. An issuer will not owe any application or entry fees in connection with such a transfer.

(c) At any time, an issuer 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 4426. An issuer will not owe any application or entry fees in connection with such a transfer.

(d) At any time, an issuer 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 4426. An issuer transferring from the Nasdaq Capital Market to the Nasdaq Global Select Market will be required to pay the applicable fees contained in Rule 4510.

(e) After initial inclusion on the Nasdaq Global Select Market, an issuer will remain on the Nasdaq Global Select Market provided it continues to meet the applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300.

(f) Notwithstanding any provision to the contrary, the securities of any issuer 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 issuer has not been below the requirement for a sufficient period of time to be considered non-compliant, and any issuer 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. Nor will any issuer before a Nasdaq Listing Qualifications Panel be allowed to transfer to the Global Select Market until the underlying deficiency is resolved. An issuer 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.

Adopted by SR-NASD-2006-068 eff. July 1, 2006.

## **IM-4425 Launch of the Nasdaq Global Select Market**

In connection with the initial launch of the Nasdaq Global Select Market in July 2006, Nasdaq will review all issuers' qualifications and assign qualified Global Market companies to the new Global Select segment. In addition, qualified Capital Market companies will be given the opportunity to be included in the new segment. In connection with this initial transfer to the Global Select Market, Nasdaq will begin to make its assessment using the most recent financial data filed as of April 28, 2006, and market data as of April 28, 2006. Nasdaq will treat as an IPO any company that initially listed as an IPO since May 1, 2005 for purposes of the liquidity tests, because these companies would have insufficient market data to establish a 12-month trading history and may have had insufficient time to satisfy the market value of public float requirement applicable to other companies. Similarly, for purposes of the market capitalization requirements of Rules 4426(c)(2) and (c)(3), any company that initially listed as an IPO since May 1, 2005 must have the applicable average market capitalization from the date of listing. Nasdaq also notes that certain Nasdaq-listed issuers that qualify to initially list on the New York Stock Exchange (NYSE.) will not be eligible to list

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

on the Global Select Market. Nasdaq will allow (but not require) any Nasdaq-listed issuer that meets the NYSE initial listing standards as of July 2006 but that does not qualify for the Global Select segment when it is adopted to be included in the Global Select Market, subject to a grace period until January 1, 2008 to achieve compliance with all listing criteria for the Global Select Market. Any issuer that avails itself of this grace period that has not achieved, compliance with all listing criteria for the, Global Select Market by January 1, 2008 will be moved to the Nasdaq Global Market. In addition, any issuer that avails itself of this grace period will remain subject to delisting in the event it fails to satisfy any of the continued listing requirements for the Nasdaq Global Market.

Adopted by SR-NASD-2006-068 eff. July 1, 2006.

## **4426. Nasdaq Global Select Market Listing Requirements**

(a) For inclusion in the Nasdaq Global Select Market, an issuer must meet the requirements of paragraphs (b), (c), and (d) of this rule, and all applicable requirements of the Rule 4300 and 4400 Series, including the qualitative requirements of Rule 4350 and IM-4300. Rule 4427 provides guidance about computations made under this Rule 4426.

(b) Liquidity Requirements

(1) The security must demonstrate either:

(A)

(i) a minimum of 550 beneficial shareholders, and

(ii) an average monthly trading volume over the prior 12 months of at least 1,100,000 shares per month; or

(B) a minimum of 2,200 beneficial shareholders; or

(C) a minimum of 450 beneficial shareholders, in the case of: (i) an issuer listing in connection with a court-approved reorganization under the federal bankruptcy laws or comparable foreign laws; or (ii) an issuer that is affiliated with another company listed on the Global Select Market.

(2) The security must have at least 1,250,000 publicly held shares; and

(3) The publicly held shares must have either:

(A) a market value of at least \$110 million; or

(B) a market value of at least \$100 million, if the issuer has stockholders' equity of at least \$110 million; or

(C) a market value of at least \$70 million in the case of: (i) an issuer listing in connection with its initial public offering; (ii) an issuer 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.

(c) Financial Requirements. An issuer, other than a closed end management investment company, must meet the requirements of one of subparagraphs (1), (2) or (3) of this paragraph.

(1) The issuer must have:

(A) aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years;

(B) positive income from continuing operations before income taxes in each of the prior three fiscal years; and

(C) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years; or

(2) The issuer must have:

(A) aggregate cash flows of at least \$27.5 million over the prior three fiscal years;

(B) positive cash flows in each of the prior three fiscal years; and

(C) both:

(i) average market capitalization of at least \$550 million over the prior 12 months; and

(ii) total revenue of at least \$110 million in the previous fiscal year; or

(3) The issuer must have both:

(A) average market capitalization of at least \$850 million over the prior 12 months; and

(B) total revenue of at least \$90 million in the previous fiscal year.

(d) Price. For inclusion in the Nasdaq Global Select Market, an issuer not listed on the Nasdaq Global Market shall have a minimum bid price of \$5 per share.

(e) Closed End Management Investment Companies.

(1) A closed end management investment company registered under the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426.

(2) In lieu of the requirement in paragraph (b)(3) of this Rule 4426, a closed end management investment company that is listed concurrently with other closed end management investment companies

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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: (A) the total market value of publicly held shares in such Fund Family is at least \$220 million; (B) the average market value of publicly held shares for all funds in the Fund Family is \$50 million; and (C) each fund in the Fund Family has a market value of publicly held shares of at least \$35 million.

(f) Other Classes of Securities. If the common stock of an issuer is included in the Nasdaq Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualify for listing on the Nasdaq Global Market shall also be included in the Global Select Market.

Adopted by SR-NASD-2006-068 eff. July 1, 2006.

## **4427. Computations and Definitions**

(a) In computing the number of publicly held shares for purposes of Rule 4426(b), Nasdaq will not consider shares held by an officer, director or 10% shareholder of the issuer.

(b) In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), Nasdaq will rely on an issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement.

(c) In calculating cash flows for purposes of Rule 4426(c)(2), Nasdaq will rely on the net cash provided by operating activities, as reported in the issuer's financial information as filed with the Commission in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities.

(d) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(1) 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.

(e) If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) 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.

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

(g) For purposes of Rule 4426, an issuer 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 issuer. 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.

(h) In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

Adopted by SR-NASD-2006-068 eff. July 1, 2006.

## **4430. Limited Partnership Rollup Designation Criteria**

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

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

(1) to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program which values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

transactions may be cash, secured debt instruments, unsecured debt instruments, or freely-tradeable securities; provided, however, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

(C) any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor demonstrates to the satisfaction of Nasdaq or, if Nasdaq determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

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

(1) if the general partner(s):

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

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

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

(2) as to voting rights, if:

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

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

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

(ii) dissolve the entity;

(iii) remove the general partner, board of directors, trustee or similar governing entity, and elect a new general partner, board of directors, trustee or similar governing entity; or

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

(3) as to transaction costs, if:

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

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

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

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

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

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

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

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

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Added by SR-NASD-93-03 eff. Nov. 1, 1994.

#### **4440. Registration Standards**

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

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

(2) issued by an insurance company meeting the conditions of Section 12(g)(2)(G) of the Act; or

(3) registered under the Securities Act of 1933 and issued by a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940;

(4) an American Depositary Receipt issued against the equity security of a foreign issuer if such equity securities are registered pursuant to Section 12 of the Act; or

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(5) registered under Section 12(b) of the Act and listed on a national securities exchange, or admitted to unlisted trading privileges on an exchange, provided that:

(A) No rule, stated policy or practice of such exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction in such security otherwise than on such exchange; and

(B) such exchange shall permit Nasdaq market makers telephone access to exchange trading facilities with respect to transactions in NGM securities to the same extent that exchange market makers are permitted access to Nasdaq market makers; and

(C) transaction reports in such security are not collected, processed and made available pursuant to the plan submitted to the Commission pursuant to SEC Rule 11Aa3-1 under the Act (the CTA Plan), which plan was declared effected as of May 17, 1974.

(b) Foreign securities and American Depositary Receipts where either the issuer is required to file reports pursuant to Section 15(d) of the Act or the security is exempt from registration under Section 12(g) of the Act by reason of the applicability of SEC Rule 12g3-2(b) are not eligible for designation in the Nasdaq Global Market.

Amended by SR-NASD-2006-068 eff. July 1, 2006.

Amended by SR-NASD-94-48 eff. Nov. 2, 1994.

Amended by SR-NASD-93-03 eff. Nov. 1, 1994.

## **4450. Quantitative Maintenance Criteria**

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

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

- (1) 750,000 shares publicly held;
- (2) Market value of publicly held shares of \$5 million;
- (3) The issuer has stockholders' equity of at least \$10 million;
- (4) 400 shareholders of round lots; and
- (5) Minimum bid price per share of \$1.
- (6) At least two registered and active market makers.

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

- (1) The issuer has:
  - (A) a market value of listed securities of \$50 million; or
  - (B) total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.
- (2) 1,100,000 shares publicly held;

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

- (3) Market value of publicly held shares of \$15 million;
- (4) Minimum bid price per share of \$1;
- (5) 400 shareholders of round lots; and
- (6) At least four registered and active market makers.

**(c) Other Securities Designated Pursuant to Rule 4420(f) and Index-Linked Securities**

(1) The aggregate market value or principal amount of publicly-held units 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 paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) 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;

(ii) 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;

(iii) 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

(iv) 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 paragraph (7)(A) of Rule 4420(m), 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 such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) Delisting or removal proceedings will also be commenced with respect to any index-linked security listed pursuant to Rule 4420(m) (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis, provided, however, that the values of the following indexes need not be calculated and disseminated at least every 15 seconds if, after the close of trading, the indicative value of any index-linked security linked to one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm); or

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

**(d) Rights and Warrants**

Common stock of issuer must continue to be designated

**(e) Compliance Periods**

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



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

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

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

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

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

**(f) Bankruptcy and/or Liquidation**

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

**(g) American Depositary Receipts**

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

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

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

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

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

**(i) Transfers between The Nasdaq Global and Capital Markets For Bid Price Deficient Issuers**

(1) If a Global Market issuer has not been deemed in compliance prior to the expiration of the compliance period for bid price provided in Rule 4450(e)(2), it may transfer to The Nasdaq Capital Market, provided that it meets all applicable requirements for initial inclusion on the Capital Market set forth in Rule 4310(c) or Rule 4320(e), as applicable, other than the minimum bid price requirement. A Nasdaq Global

## *Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

Market issuer transferring to The Nasdaq Capital Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

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

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2006-001 eff. Jan. 23, 2006.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-147 eff. Jan. 1, 2005.  
Amended by SR-NASD-2003-44 eff. Nov. 23, 2003.  
Amended by SR-NASD-2003-34 eff. March 7, 2003.  
Amended by SR-NASD-2002-89 eff. Jan. 14, 2003.  
Amended by SR-NASD-2001-84 eff. June 1, 2002.  
Amended by SR-NASD-2002-13 eff. Feb. 4, 2002.  
Amended by SR-NASD-2001-14 eff. June 29, 2001.  
Amended by SR-NASD-99-69 eff. Oct. 11, 2000.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Redesignated Sec. 5 by SR-NASD-93-03 eff. Nov. 1, 1994.  
Amended by SR-NASD-93-15 eff. Sept. 29, 1993.  
Amended eff. Jan. 9, 1989; Apr. 20, 1993; June 15, 1993.  
Adopted by SR-NASD-86-27 eff. June 23, 1987.

**Selected Notice:** 94-98.

### **4480. Termination Procedure**

(a) Failure to maintain compliance with the provisions of Rules 4350, 4450, or 4470 will result in the termination of an issue's designation unless an exception is granted as provided in the Rule 4800 Series. Termination shall become effective in accordance with the terms of notice by Nasdaq.

(b) An issuer may voluntarily terminate its designation upon written notice to Nasdaq.

Amended by SR-NASD-2000-62 eff. Oct. 18, 2000.  
Amended by SR-NASD-98-88 eff. May 4, 1999.  
Amended by SR-NASD-97-97 eff. Jan. 15, 1998.  
Amended by SR-NASD-97-16 eff. Aug. 22, 1997.  
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.  
Amended eff. Oct. 31, 1993.  
Adopted by SR-NASD-86-27 eff. June 23, 1987.

**Selected Notice:** 94-70.

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2003-198 eff. Dec. 29, 2003.

### **IM-4500-3. Reserved**

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-047 eff. April 4, 2006.  
Adopted by SR-NASD-2004-04 eff. Feb. 19, 2004.

## **4510. The Nasdaq Global Market**

### **(a) Entry Fee**

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

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

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

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

(4) An issuer that submits an application for inclusion of any class of rights in The Nasdaq Global Market, shall pay, at the time of its application, a non-refundable application fee of \$1,000 to The Nasdaq Stock Market, Inc.

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

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

(7) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq Global Market; 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 as national market securities under the Rule 4400 Series.

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

(9) An issuer that transfers its listing from The Nasdaq Capital Market to The Nasdaq Global Market shall pay the entry fee described in this Rule 4510(a) less the entry fee that was previously paid by the

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

issuer to Nasdaq in connection with listing on The Nasdaq Capital Market. Such issuer is not required to pay the application fee described in Rule 4510(a) in connection with the application to transfer listing.

(10) An issuer 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 Rule 4510(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 in The Nasdaq Stock Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

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

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

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

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

**(c) Annual Fee — Domestic and Foreign Issues**

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

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

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

(3) If a class of securities is removed from the Nasdaq 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 included in the Nasdaq Global Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(5) In lieu of the fees described in Rules 4510(c)(1), 4510(d)(1), and 4510(d)(3), the annual fee shall be \$15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq. If an issuer of such securities ceases to maintain such listing and designation and the securities are instead designated under the Rule 4400 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 Capital 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 in The Nasdaq Global Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on ADRs outstanding according to the following schedule not to exceed \$30,000 per issuer:

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

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

(3) A Closed-End Fund listed in The Nasdaq Global Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

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

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

(5) The Board of Directors of The Nasdaq Stock Market, Inc. 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**

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to The Nasdaq Stock Market, Inc. and submit the appropriate form as designated by Nasdaq.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

**(f) Substitution Listing Fee**

An issuer that implements a Substitution Listing Event shall pay a fee of \$7,500 to The Nasdaq Stock Market, Inc. 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 and not designated by Nasdaq as Nasdaq national market system securities.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2006-047 eff. April 4, 2006.  
Amended by SR-NASD-2005-143 eff. Jan. 9, 2006.  
Amended by SR-NASD-2005-106 eff. Nov. 7, 2005.  
Amended by SR-NASD-2004-162 eff. Nov. 1, 2005.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2005-096 eff. July 29, 2005.  
Amended by SR-NASD-2005-044 eff. April 4, 2005.  
Amended by SR-NASD-2004-142 eff. Jan. 10, 2005.  
Amended by SR-NASD-2004-140 eff. Jan. 10, 2005.  
Amended by SR-NASD-2004-128 eff. Dec. 10, 2004.  
Amended by SR-NASD-2003-178 eff. Feb. 2, 2004.  
Amended by SR-NASD-2003-127 eff. Oct. 15, 2003.  
Amended by SR-NASD-2002-183 eff. Dec. 31, 2002.  
Amended by SR-NASD-2001-76 eff. Dec. 28, 2001.  
Amended by SR-NASD-2001-38 eff. Aug. 3, 2001.  
Amended by SR-NASD-99-61 eff. Jan. 20, 2000.  
Amended by SR-NASD-99-40 eff. Dec 30, 1999.  
Amended by SR-NASD-99-30 eff. Jan. 1, 1999 for annual fees and June 22, 1999 for entry fees.  
Amended by SR-NASD-97-83 eff. Jan. 1, 1998.  
Amended by SR-NASD-92-27 eff. Feb. 16, 1993.  
Amended by SR-NASD-91-64 eff. Dec. 30, 1991.  
Amended by SR-NASD-91-65 eff. Dec. 16, 1991.  
Amended by SR-NASD-90-61 eff. Jan. 2, 1991.  
Amended eff. Dec. 29, 1977; Mar. 1, 1986.  
Adopted eff. June 1, 1977.

## **4520. The Nasdaq Capital Market**

**(a) Entry Fee**

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

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

(2) An issuer that submits an application for inclusion of any class of convertible debentures in The Nasdaq Capital Market, shall pay to The Nasdaq Stock Market, Inc. 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 inclusion of a class of securities in The Nasdaq Capital Market shall pay to the Nasdaq Stock Market, Inc. an entry fee of \$5,000 (of which \$1,000 represents a non-refundable, application fee).

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(5) Total shares outstanding means the aggregate of all classes of equity securities to be included in The Nasdaq Capital Market as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(6) An issuer that submits an application for inclusion of any class of rights in The Nasdaq Capital Market, shall pay, at the time of its application, a non-refundable application fee to The Nasdaq Stock Market of \$1,000.

(7) The fees described in this Rule 4520(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq Capital Market; 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 applicable to Nasdaq Capital Market securities.

(8) The fees described in this Rule 4520(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(9) An issuer 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 4520(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 in The Nasdaq Capital Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

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

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

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

(5) The fees described in this Rule 4520(b) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

**(c) Annual Fee**

(1) The issuer of each class of securities that is a domestic or foreign issue, including American Depositary Receipts (ADRs), listed in The Nasdaq Capital Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares	\$17,500
Over 10 million shares	\$21,000

(2) Notwithstanding paragraph (1), the issuer of each class of convertible debentures listed in The Nasdaq Capital Market shall pay to The Nasdaq Stock Market, Inc. 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 The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares	\$15,000
------------------------	----------

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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 Board of Directors of The Nasdaq Stock Market, Inc. 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 included in The Nasdaq Capital Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq. In the case of foreign issuers, total shares outstanding shall include only those shares issued and outstanding in the United States.

(7) Notwithstanding paragraph (6), for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq Global Market or The Nasdaq Capital Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum, annual fee applicable to a fund family shall not exceed \$75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

(8) In lieu of the fees described in Rules 4520(c)(1) and 4520(c)(3), the annual fee shall be \$15,000 for each issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq. Such annual fee shall be assessed on the first anniversary of the issuer's listing on Nasdaq. 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**

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of \$2,500 to The Nasdaq Stock Market, Inc. and submit the appropriate form as designated by Nasdaq.

**(e) Substitution Listing Fee**

An issuer that implements a Substitution Listing Event shall pay a fee of \$7,500 to The Nasdaq Stock Market, Inc. 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 and not designated by Nasdaq as Nasdaq national market system securities.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2006-047 eff. April 4, 2006.  
Amended by SR-NASD-2005-143 eff. Jan. 9, 2005.  
Amended by SR-NASD-2005-106 eff. Nov. 7, 2005.  
Amended by SR-NASD-2004-162 eff. Nov. 1, 2005.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2005-044 eff. April 4, 2005.  
Amended by SR-NASD-2004-142 eff. Jan. 10, 2005.



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

Amended by SR-NASD-2004-140 eff. Jan. 10, 2005.  
Amended by SR-NASD-2004-128 eff. Dec. 10, 2004.  
Amended by SR-NASD-2003-178 eff. Feb. 2, 2004.  
Amended by SR-NASD-2003-127 eff. Oct. 15, 2003.  
Amended by SR-NASD-2002-183 eff. Dec. 31, 2002.  
Amended by SR-NASD-2001-76 eff. Dec. 28, 2001.  
Amended by SR-NASD-2001-38 eff. Aug. 3, 2001.  
Amended by SR-NASD-99-61 eff. Jan. 20, 2000.  
Amended by SR-NASD-99-40 eff. Dec 30, 1999.  
Amended by SR-NASD-97-83 eff. Jan. 1, 1998.  
Amended by SR-NASD-91-64 eff. Dec. 30, 1991.  
Amended by SR-NASD-88-44 eff. Nov. 17, 1988.

## **IM-4520-1. Foreign Exempt Securities**

Rules 4520(b)(4) and 4520(c)(3) provide Nasdaq with the discretion to waive all or part of the additional share and annual listing fees otherwise due. Pursuant to that authority, Nasdaq has determined to waive any additional share or annual fee that otherwise would be due from any issuer described in Rule 4320(c).

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Adopted by SR-NASD-2004-128 eff. Dec. 10, 2004.

## **4530. Other Securities**

### **(a) Application Fee and Entry Fee**

(1) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq Global Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay a non-refundable Application Fee of \$1,000.

(2) When an issuer submits an application for inclusion of any Other Security or SEEDS in the Nasdaq Global Market qualified for listing under Rule 4420(f) or 4420(g), it shall pay an Entry Fee calculated based on total shares outstanding according to the following schedule:

Up to 1 million shares...	\$5,000
1+ to 2 million shares...	\$10,000
2+ to 3 million shares...	\$15,000
3+ to 4 million shares...	\$17,500
4+ to 5 million shares...	\$20,000
5+ to 6 million shares...	\$22,500
6+ to 7 million shares...	\$25,000
7+ to 8 million shares...	\$27,500
8+ to 9 million shares...	\$30,000

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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 inclusion during the current calendar year of any of the issuer's Other Securities and SEEDS in the Nasdaq Global Market.

(3) For the sole purpose of determining the Entry Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer to be included in the Nasdaq Global Market in the current calendar year as shown in the issuer's most recent periodic report or in more recent information held by Nasdaq or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority.

(4) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the Application Fee or Entry Fee prescribed herein.

(5) If the application is withdrawn or is not approved, the Entry Fee shall be refunded.

**(b) Annual Fee**

(1) The issuer of Other Securities or SEEDS qualified under Rule 4420(f) or 4420(g) for listing on the Nasdaq Global Market shall pay to The Nasdaq Stock Market, Inc. 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 Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the Annual Fee prescribed herein.

(3) For the sole purpose of determining the Annual Fee, total shares outstanding means the aggregate of all classes of Other Securities and SEEDS of the issuer included in the Nasdaq Global Market, as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2004-166 eff. Dec. 20, 2004.  
Adopted by SR-NASD-2001-76 eff. Dec. 28, 2001.

## **4540. Portfolio Depository Receipts and Index Fund Shares**

### **(a) Entry Fee**

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(1) When an issuer submits an application for listing a series of Portfolio Depository Receipts or Index Fund Shares in The Nasdaq Global Market, it shall pay to The Nasdaq Stock Market, Inc. a listing fee of \$5,000 (which shall include a \$1,000 non-refundable processing fee).

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

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

**(b) Annual Fee**

(1) The issuer of a series of Portfolio Depository Receipts or Index Fund Shares listed on The Nasdaq Global Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 1 million shares...	\$6,500
1+ to 2 million shares...	\$7,000
2+ to 3 million shares...	\$7,500
3+ to 4 million shares...	\$8,000
4+ to 5 million shares...	\$8,500
5+ to 6 million shares...	\$9,000
6+ to 7 million shares...	\$9,500
7+ to 8 million shares...	\$10,000
8+ to 9 million shares...	\$10,500
9+ to 10 million shares...	\$11,000
10+ to 11 million shares...	\$11,500
11+ to 12 million shares...	\$12,000
12+ to 13 million shares...	\$12,500
13+ to 14 million shares...	\$13,000
14+ to 15 million shares...	\$13,500
15+ to 16 million shares...	\$14,000
Over 16 million shares...	\$14,500

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(2) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares to be included in The Nasdaq Global Market as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority or in more recent information held by Nasdaq.

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Adopted by SR-NASD-2002-45 eff. June 25, 2002.

## **4550. Written Interpretations of Nasdaq Listing Rules**

(a) An issuer listed on The Nasdaq Capital Market or The Nasdaq Global Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b) Notwithstanding paragraph (a), an issuer may request a written interpretation of the Rules contained in the 4000 through 4500 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$10,000.

(c) An applicant to The Nasdaq Stock Market that has submitted the applicable entry fee under Rule 4510 or Rule 4520 will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial inclusion on Nasdaq. In addition, an issuer is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2).

(d) The Board of Directors of The Nasdaq Stock Market, Inc. 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.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-079 eff. Aug. 13, 2004.  
Amended by SR-NASD-2004-054 eff. March 31, 2004.  
Adopted by SR-NASD-2003-105 eff. Oct. 1, 2003.

## **4611. Registration as a Nasdaq Market Maker**

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

(b) An Association member seeking registration as a Nasdaq market maker shall file an application with the Association. The application shall certify the member's good standing with the Association and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. A member's registration as a Nasdaq market maker shall become effective upon receipt by the member of notice of an approval of registration by the Association.

(c) A Nasdaq market maker may become registered in an issue by entering a registration request via a Nasdaq terminal or other Nasdaq approved electronic interface with Nasdaq's systems or by contacting

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

Nasdaq Market Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered.

(d) A Nasdaq market maker's registration in an issue shall be terminated by the Association 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.

(e) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq-listed security shall participate in the Nasdaq Market Center with respect to that security and be subject to the Nasdaq Market Center Rules as set forth in the Rule 4700 Series.

(f) In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/CQS symbol directory.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-99-11 eff. July 30, 2001.  
Amended by SR-NASD-99-53 eff. Jan. 19, 2001.  
Amended by SR-NASD-2000-63 eff. Oct. 20, 2000.  
Amended by SR-NASD-97-31 eff. June 23, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. July 20, 1987; June 9, 1988; June 30, 1988; Aug. 31, 1988; June 27, 1989; Apr. 24, 1992; Feb. 26, 1993.

**Selected Notice:** 93-24.

## **4612. Primary Nasdaq Market Maker Standards**

(a) A member registered as a Nasdaq market maker pursuant to Rule 4611 may be deemed to be a Primary Nasdaq Market Maker in Nasdaq Global Market securities if the market maker complies with threshold standards (as established and published by the Association from time to time) in the following qualification criteria:

(1) amount of time a dealer maintains a quotation that represents the best bid or best offer as shown in The Nasdaq Stock Market;

(2) relation of individual dealer spread to average dealer spread; and

(3) frequency of dealer quotation updates without a corresponding execution in the security occurring within three minutes before or after a quotation update.\*

(b) A market maker for a Nasdaq Global Market security must satisfy the threshold standards in at least two of the criteria in paragraph (a) in order to be designated a Primary Nasdaq Market Maker in that security; provided however, that if a market maker satisfies only one of the criteria, it may qualify as a Primary Nasdaq Market Maker if it also accounts for a threshold level of proportionate volume in the security (as established and published by the Association from time to time).\*\*

(c) The review period for review of market maker performance in each of the qualification criteria in paragraph (a), paragraph (g)(1)(B), and paragraph (g)(2)(B)(ii) shall be one calendar month.

(d) If, after the review period, a market maker does not satisfy the threshold standards for the criteria in paragraph (a), the Primary Nasdaq Market Maker designation shall be withheld commencing on the next business day following notice of failure to comply with the standards.

(e) Market makers may requalify for designation as a Primary Nasdaq Market Maker by satisfying the threshold standards for the next review period.

(f) A market maker may request reconsideration of the notice to withhold the Primary Nasdaq Market Maker designation.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(1) Grounds for requests for reconsideration shall be limited to:

(A) system failure;

(B) excused market maker withdrawal status; or

(C) where a market maker failed to qualify under the criteria set forth in paragraph (a)(3) because of activity in a related derivative or convertible security, or activity in a security subject to derivative pricing mechanisms, such as currency differentials with foreign stocks.

(2) Requests for reconsideration must be sent in writing to Nasdaq Operations within 24 hours of the determination to withhold the Primary Nasdaq Market Maker designation.

(3) Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members.

(g) In registration situations:

(1) To register and immediately become a Primary Nasdaq Market Maker in a Nasdaq Global Market security, a member must be a Primary Nasdaq Market Maker in 80% of the securities in which it has registered. If the market maker is not a Primary Nasdaq Market Maker in 80% of its stocks, it may qualify as a Primary Nasdaq Market Maker in that stock if the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(2) Notwithstanding paragraph (g)(1) above, after an offering in a stock has been publicly announced or a registration statement has been filed, no market maker may register in the stock as a Primary Nasdaq Market Maker unless it meets the requirements set forth below:

(A) For secondary offerings:

(i) the secondary offering has become effective and the market maker has satisfied the qualification criteria in the time period between registering in the security and the offering becoming effective; provided, however, that if the member is a manager or co-manager of the underwriting syndicate for the secondary offering and it is a PMM in 80% or more of the Nasdaq Global Market securities in which it is registered, the member is eligible to become a PMM in the issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering; or

(ii) the market maker has satisfied the qualification criteria for 40 calendar days.

(B) For initial public offerings (IPOs):

(i) the market maker may register in the offering and immediately become a Primary Nasdaq Market Maker if it is a Primary Nasdaq Market Maker in 80% of the securities in which it has registered; provided however, that if, at the end of the first review period, the Primary Nasdaq Market Maker has withdrawn on an unexcused basis from the security or has not satisfied the qualification criteria, it shall not be afforded a Primary Nasdaq Market Maker designation on any subsequent initial public offerings for the next 10 business days; or

(ii) the market maker registers in the stock as a regular Nasdaq market maker and satisfies the qualification criteria for the next review period.

(C) For purposes of subparagraph (B)(i) above:

(i) an issue ceases to be an IPO once it has traded on Nasdaq for five (5) business days; and

(ii) the applicable first review period for IPOs that come to market during the last five (5) business days of a month is the calendar month after the month in which the IPO commenced trading on Nasdaq.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(3) Notwithstanding paragraph (g)(1) or (g)(2) above, after a merger or acquisition has been publicly announced, a Primary Nasdaq Market Maker in one of the two affected securities may immediately register as a Primary Nasdaq Market Maker in the other merger or acquisition security pursuant to the same-day registration procedures in Rule 4611.

(h) The Board of Governors may modify the threshold standards set forth in paragraphs (a) and (b) above if it finds that maintenance of such standards would result in an adverse impact on a class of investors or on Nasdaq.

**~~Cross Reference~~**

*IM-11890-2, Review by Panels of the MORC*

---

\* The threshold standards initially shall be established as:

(a) a market maker must maintain the best bid or best offer as shown on Nasdaq no less than 35% of the time;

(b) a market maker must maintain a spread no greater than 102% of the average dealer spread;

(c) no more than 50% of a market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading. The Board of Governors reserves the authority to rescind or modify one or more of the threshold standards immediately upon a finding that the standard is operating in a manner that is unfair to a class of investors or members, or that continued imposition of the standard results in a substantial adverse impact on the liquidity or market quality of the Nasdaq market.

\*\* The threshold proportionate volume standard initially shall require a market maker to account for volume of at least 1½ times its proportionate share of overall volume in the stock for the review period.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2003-80 eff. May 6, 2003.  
Amended by SR-NASD-97-30 eff. June 23, 1997.  
Amended by SR-NASD-96-25 eff. July 11, 1996.  
Amended by SR-NASD-96-11 eff. May 9, 1996.  
Adopted by SR-NASD-92-12 eff. Sept. 6, 1995.

**Selected Notices:** 94-68, 94-83, 96-36

## **4613. Character of Quotations**

### **(a) Quotation Requirements and Obligations**

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a 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 Quotation Montage at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a Nasdaq-listed security must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

with SEC Rule 11Ac1-4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares.

(B) Minimum Price Variation — The minimum quotation increment for Nasdaq Global Market and Capital Market securities shall be \$0.01 for quotations priced at or above \$1.00 per share and \$0.0001 for quotations priced below \$1.00 per share; provided, however, that if the Securities and Exchange Commission ("SEC") permits, with respect to any security, the display, rank or acceptance of quotations priced at or above \$1.00 per share in an increment smaller than \$0.01, then the minimum quotation increment for such a security shall be the minimum permitted by the SEC or \$0.0001, whichever is greater. Quotations failing to meet this standard shall be rejected.

(2) The first MPID issued to a member pursuant to subparagraph (1) of this rule, or Rule 4623, shall be referred to as the member's "Primary MPID." For a six-month pilot period ending November 30, 2006, market makers and ECNs may request the use of additional MPIDs that shall be referred to as "Supplemental MPIDs." Market makers and ECNs may be issued up to nine Supplemental MPIDs. A market maker may request the use of a 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 exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above, as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to market makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by market makers to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619.

**(b) Firm Quotations**

(1) A market maker that receives an offer to buy or sell from another member of the Association shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer. If a market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member of the Association, execute a transaction at least at the size displayed.

(2) If a market maker, upon receipt of an offer to buy or sell from another member of the Association in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such market maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a market maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (c)(1) of this rule.

**(c) Quotations Reasonably Related to the Market**

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

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

(d) Reserved



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

**(e) Locked and Crossed Markets**

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

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another market maker entering quotations in the same security.

(2) A market maker shall, prior to entering a quotation that locks or crosses another quotation, make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Pursuant to the provisions of paragraph (b) of this Rule, a market maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through Nasdaq at the time of receipt of any order.

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

(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1-1(a)(8), a priced order that is displayed in The Nasdaq Stock Market;

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

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-150 eff. Jan. 31, 2006.  
Amended by SR-NASD-2006-004 eff. Jan. 12, 2006.  
Amended by SR-NASD-2005-069 eff. May 25, 2005.  
Amended by SR-NASD-2004-071 eff. Oct. 1, 2004.  
Amended by SR-NASD-2004-134 eff. Sept. 1, 2004.  
Amended by SR-NASD-2004-097 eff. June. 24, 2004.  
Amended by SR-NASD-2004-037 eff. March 1, 2004.  
Amended by SR-NASD-2003-035 eff. March 1, 2004.  
Amended by SR-NASD-2004-035 eff. Jan. 30, 2004.  
Amended by SR-NASD-2003-137 eff. Sept. 1, 2003.  
Amended by SR-NASD-2003-87 eff. July 1, 2003.  
Amended by SR-NASD-2002-123 eff. Oct. 14, 2002.  
Amended by SR-NASD-2002-56 eff. Oct 14, 2002.  
Amended by SR-NASD-2002-137 eff. Oct. 4, 2002.  
Amended by SR-NASD-2002-56 eff. Aug. 23, 2002.  
Amended by SR-NASD-2002-67 eff. July 25, 2002.  
Amended by SR-NASD-2000-76 eff. May 28, 2002.  
Amended by SR-NASD-99-11 eff. July 30, 2001.  
Amended by SR-NASD-2001-07 eff. March 12, 2001.  
Amended by SR-NASD-99-53 eff. Jan. 19, 2001.  
Amended by SR-NASD-2000-18 eff. June 12, 2000.  
Amended by SR-NASD-99-23 eff. June 5, 2000.  
Amended by SR-NASD-99-49 eff. May 30, 2000.  
Amended by SR-NASD-99-20 eff. Aug. 2, 1999.  
Amended by SR-NASD-98-01 eff. Nov. 1, 1998.  
Amended by SR-NASD-98-21 eff July 20, 1998.  
Amended by SR-NASD-97-26 eff. Oct. 29, 1997.  
Amended by SR-NASD-97-70 eff. Sept. 23, 1997.  
Amended by SR-NASD-97-49 eff. July 18, 1997.

Amended by SR-NASD-97-46, eff. July 1, 1997.  
Amended by SR-NASD-97-25 eff. Apr. 15, 1997.  
Amended by SR-NASD-97-13 eff. Feb. 28, 1997.  
Amended by SR-NASD-96-43 eff. Jan. 20, 1997.  
Amended by SR-NASD-96-50 eff. Jan. 16, 1997.  
Amended by SR-NASD-94-50 eff. Nov. 21, 1994.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended by SR-NASD-93-16 eff. Jan. 31, 1994.  
Amended eff. July 20, 1987; June 9, 1988; June 30, 1988; Sept. 18, 1990; June 20, 1991; Feb. 1, 1993; July 26, 1993.

**Selected Notices:** 91-37, 93-2, 93-43, 99-61, 00-29.

## **4614. Stabilizing Bids**

### **(a) Market Maker Obligation/Identifier**

A market maker that intends to stabilize the price of a Nasdaq 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 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 market maker in addition to the market maker entering the stabilizing bid is registered as a 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 tradeable outstanding securities of the same class being offered.

### **(d) Submission of Request to Association**

(1) A 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 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 Nasdaq 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 the Association determines otherwise.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2003-125 eff. Aug. 8, 2003.  
Amended by SR-NASD-97-18 eff. Mar. 14, 1997.  
Amended by SR-NASD-97-15 eff. Mar. 4, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. July 20, 1987.

## **4616. Reports**

A market maker shall make such reports to the Association as may be prescribed from time to time by the Association.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-93-01 eff. June 25, 1993.  
Amended eff. July 20, 1987; Feb. 13, 1989; June 29, 1992.

**Selected Notices:** 88-104, 89-17, 89-70, 93-83.

## **4617. Normal Business Hours**

A Nasdaq market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. Should a market maker wish to voluntarily remain open for business later than 4:00 p.m. Eastern Time, it shall so notify the Nasdaq Market Operations via a Nasdaq terminal and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time. Nasdaq market makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of the Association, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2003-14 eff. January 31, 2003.  
Amended by SR-NASD-99-57 eff. Oct. 25, 1999.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. July 20, 1987; Feb. 13, 1989.

## **4618. Clearance and Settlement**

(a) A market maker shall clear and settle transactions in Nasdaq securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

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

(c) 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.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-076 eff. May 5, 2004  
Amended by SR-NASD-99-11 eff. July 30, 2001.  
Amended by SR-NASD-99-53 eff. Jan. 19, 2001.  
Amended by SR-NASD-94-28 eff. Oct. 11, 1994.  
Amended eff. July 20, 1987; amended June 9, 1988, eff. June 30, 1988; Feb. 13, 1989.

**Selected Notice:** 94-73.

## **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.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

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

(c) Excused withdrawal status based on circumstances beyond the 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 the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) The written request for withdrawal is received by the Association one business day in advance, and is approved by the Association

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

(3) The request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a 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 market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(d) Excused withdrawal status may be granted to a 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 Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the 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 National Market Execution System. Market makers that fail to maintain a clearing relationship will have their NNMS 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 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 Nasdaq security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq MarketWatch and the Market Regulation Department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each 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 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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq MarketWatch as required by subparagraph (e)(2), below.

(2) A 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 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 the Association from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

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

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

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

**Cross Reference:**

*IM-11890-2, Review by Panels of the MORC*

Amended by SR-NASD-2004-063 eff. Apr. 27, 2004.  
Amended by SR-NASD-2004-032 eff. March 14, 2004.  
Amended by SR-NASD-2003-125 eff. Aug. 8, 2003.  
Amended by SR-NASD-2003-80 eff. May 6, 2003.  
Amended by SR-NASD-2002-97 eff. July 29, 2002.  
Amended by SR-NASD-2002-01 eff. June 28, 2002.  
Amended by SR-NASD-99-11 eff. July 30, 2001.  
Amended by SR-NASD-99-53 eff. Jan. 19, 2001.  
Amended by SR-NASD-97-04 eff. Dec. 10, 1997.  
Amended by SR-NASD-97-18 eff. Mar. 14, 1997.  
Amended by SR-NASD-97-15 eff. Mar. 4, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. July 20, 1987; June 9, 1988; Dec. 20, 1988; Feb. 13, 1989; Sept. 7, 1989; May 1, 1992; May 28, 1993

**Selected Notices:** 88-69, 89-15, 93-29, 93-41.

## **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 market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

from participation as a market maker in a Nasdaq-listed security 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 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 and thereby terminates its registration as a market maker in Nasdaq-listed issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with Nasdaq Market Center participant requirements contained in Rule 6100.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) the 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 market maker's firm would not exceed the following reinstatement limitations:

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

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

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

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

(1) the number of accidental withdrawals by the market maker in the past, as compared with market makers making markets in a comparable number of stocks;

(2) the similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the 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 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 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 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 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 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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

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

**Cross Reference—**

*IM-11890-2, Review by Panels of the MORC*

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-074 eff. Oct. 29, 2004.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-2003-125 eff. Aug. 8, 2003.  
Amended by SR-NASD-2003-80 eff. May 6, 2003.  
Amended by SR-NASD-2002-67 eff. July 25, 2002.  
Amended by SR-NASD-99-11 eff. July 30, 2001.  
Amended by SR-NASD-99-53 eff. Jan. 19, 2001.  
Amended by SR-NASD-97-04 eff. Dec. 10, 1997.  
Amended by SR-NASD-94-48 eff. Nov. 2, 1994.  
Amended eff. July 20, 1987; June 30, 1988; Feb. 13, 1989; June 29, 1989.

## **4621. Suspension and Termination of Quotations by Association Action**

The Association may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a market maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended eff. Feb. 13, 1989.

## **4622. Termination of Nasdaq Service**

The Association may, upon notice, terminate Nasdaq service in the event that a market maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by The Nasdaq Stock Market, Inc.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended eff. July 20, 1987.

**Selected Notice:** 88-43.

## **4623. Alternative Trading Systems**

(a) The Association may provide a means to permit alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and electronic communications networks("ECNs"), as such term is defined in SEC Rule 11Ac1-1(a)(8),

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

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 11Ac1-1(c)(5)(ii)(A) and (B) ("ECN display alternatives"); or

(3) to provide orders to Nasdaq voluntarily.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

In providing any such means, the Association shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by Nasdaq market makers (and other subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in Nasdaq), and allows any NASD 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 the Association that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as a NASD member;

(3) enter into and comply with the terms of a Nasdaq Workstation Subscriber Agreement, as amended for ATSS and ECNs;

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

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the ATS or ECN through the Nasdaq-provided display alternative.

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

(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an ATS or ECN-displayed order by sending an order that is larger than the ATS's or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such Nasdaq-delivered order:

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

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

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

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

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2003-128 eff. March 1, 2004.  
Amended by SR-NASD-2004-006 eff. Jan. 13, 2004.  
Amended by SR-NASD-99-49 eff. May 30, 2000.  
Amended by SR-NASD-98-01 eff. Nov. 1, 1998.  
Adopted by SR-NASD-96-43 eff. Jan. 20, 1997.



## **4624. Penalty Bids and Syndicate Covering Transactions**

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A 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 Nasdaq symbol; and

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

(c) Notwithstanding paragraph (a), a market maker may request that its quotation 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.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2003-125 eff. Aug. 8, 2003.  
Amended by SR-NASD-97-68 eff. Oct. 22, 1997.  
Adopted by SR-NASD-97-15 eff. Apr. 1, 1997.

## **4625. Obligation to Provide Information**

(a) An NASD member operating in or participating in the Nasdaq Market Center or other Nasdaq-operated system. . . shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(1) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A) a locked or crossed market; or

(B) a trade reported by a member or ECN to the Nasdaq Market Center; or

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

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

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

(F) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 5106 and 6350; or

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

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(H) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.

(2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A) a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612; or

(B) a Nasdaq Market Center trade reporting input error; or

(C) 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.

Deleted by SR-NASD-2005-087 eff. Aug. 1, 2006.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-2003-125 eff. Aug. 8, 2003.  
Amended by SR-NASD-98-01 eff. Nov. 1, 1998.

## **4801. Definitions**

(a) The term "Adjudicator" shall mean a member of an Adjudicatory Body.

(b) The term "Adjudicatory Body" shall mean a Listing Qualifications Panel, the Listing Council, or the NASD Board.

(c) The term "Advisor" shall mean an individual employed by Nasdaq or NASD who is advising an Adjudicatory Body with respect to a proceeding under the Rule 4800 Series.

(d) The term "Hearings Department" shall mean the Listing Qualifications Hearings Department in the Nasdaq Office of General Counsel.

(e) The term "Listing Council" shall mean the Nasdaq Listing and Hearing Review Council, a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-Laws whose responsibilities include the review of determinations to limit or prohibit the listing of an issuer's securities made by a Listing Qualifications Panel.

(f) The term "Listing Council Decision" shall mean a written decision of the Listing Council.

(g) The term "Listing Department" shall mean the Listing Qualifications Department, the department of Nasdaq that is responsible for evaluating the compliance of issuers with the quantitative and qualitative listing standards set forth in the Rule 4000 Series and determining the eligibility for initial or continued listing of an issuer's securities.

(h) The term "Listing Qualifications Panel" or "Panel" shall mean an independent panel composed of at least two persons, not employees of the NASD or its subsidiaries, designated by the Nasdaq Board of Directors.

(i) The term "NASD Board" shall mean the Board of Governors of the NASD.

(j) The term "Panel Decision" shall mean a written decision of a Listing Qualifications Panel.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(k) The term "Staff Determination" shall mean either:

(1) a written determination by the Listing Department to limit or prohibit the initial or continued listing of an issuer's securities pursuant to Rule 4804; or

(2) a public reprimand letter in a case where the Listing Department has determined that the issuer has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Securities Exchange Act of 1934) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Listing Department shall consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the issuer reasonably relied on an independent advisor and whether the issuer has demonstrated a pattern of violations.

Amended by SR-NASD-2005-136 eff. Nov 17, 2005.

Adopted by SR-NASD-2004-125 eff. Aug. 26, 2005.

## **4802. Purpose and General Provisions**

(a) The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq Stock Market based upon the Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, The Nasdaq Stock Market.

(b) An issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series . . . at any time during the pendency of a proceeding under the Rule 4800 Series. A Listing Qualifications Panel may grant exceptions for a period not to exceed the earlier of 90 days from the date of the Panel Decision or 180 days from the date of the Staff Determination with respect to the deficiency for which the exception is granted, and the Listing Council may grant exceptions for a period not to exceed the earlier of 60 days from the date of the Listing Council Decision or 180 days from the date of the Panel Decision with respect to the deficiency for which the exception is granted, in each case where it deems appropriate.

(c) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, the Listing Council, or the NASD Board, as part of its respective review, (1) may request additional information from the issuer or the Listing Department, and (2) may consider such additional information available from any source as the Adjudicatory Body may deem to be relevant. The issuer and the Listing Department shall be afforded written notice and an opportunity to address the significance of any such information requested or considered.

. . . .  
(d) At each level of a proceeding under the Rule 4800 Series, an Adjudicatory Body, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding. The Listing Council or the NASD Board, as part of its respective review, may also consider any action by an issuer during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the issuer's securities been listed on Nasdaq at the time. The issuer shall be afforded written notice of such consideration and an opportunity to respond. Furthermore, an Adjudicatory Body may subject the issuer to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of the Adjudicatory Body, even though the securities meet all enumerated criteria for initial or continued inclusion in The Nasdaq Stock Market.

(e) The Listing Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a decision with respect to an issuer is implemented.

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

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2003-23 eff. Jan 21, 2004.  
Adopted by SR-NASD-98-88 eff. May 4, 1999.

### **4803. Staff Review of Deficiency**

(a) Whenever staff of the Listing Department determines that an issuer does not meet a listing standard set forth in the Rule 4000 Series, staff shall immediately notify the issuer. The issuer shall make a public announcement through the news media disclosing the receipt of this notice, including the Rule(s) upon which it was based. Prior to the release of the public announcement, the issuer shall provide such disclosure to Nasdaq's Market Watch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the notice from the Listing Department.

(1) In the case of

(A) all quantitative deficiencies from standards that do not provide a compliance period;

(B) deficiencies from the standards of Rules 4350(c) or (d) or 4360(c) or (d) where the cure period of the Rule is not applicable; or

(C) deficiencies from the standards of Rules 4350(f), (h), (i), (k), or (n), 4360(f) or (i), or 4351; staff's notice shall provide the issuer with fifteen calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the issuer shall not be provided with an opportunity to submit such a plan if review under the Rule 4800 Series of a prior Staff Determination with respect to the issuer is already pending. Subject to the restrictions of paragraph (b), staff may extend this deadline upon good cause shown. Upon receipt of the issuer's plan, staff in the Listing Department may request such additional information from the issuer as is necessary to make a determination regarding the likelihood that the plan will allow the issuer to meet the listing standard at issue.

(2) In the case of:

(A) quantitative deficiencies from standards that do provide a compliance period; and

(B) deficiencies from the standards of Rules 4350(c) or (d) or 4360(c) or (d) where the cure period of the Rule is applicable;

staff's notice shall provide the issuer with the applicable compliance or cure period.

(3) In all other cases, staff's notice shall be in the form a Staff Determination issued pursuant to Rule 4804(a).

(b) Unless review under the Rule 4800 Series of a prior Staff Determination with respect to the issuer is already pending, the Listing Department may grant the issuer additional time to regain compliance with a listing standard described in paragraph (a)(1); provided, however, that the additional time provided by all such exceptions shall not exceed 105 calendar days from the date of staff's notification pursuant to paragraph (a). The Listing Department shall prepare a written record describing the basis for granting any exception, and shall provide the issuer with written notice as to the terms of the exception. If the issuer does not regain compliance within the time period provided by all applicable exceptions, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a). If the Listing Department determines not to grant the issuer additional time to regain compliance, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a) that includes a description of the basis for denying the exception.

Adopted by SR-NASD-2004-125 eff. Aug. 26, 2005.

### **IM-4803. Staff Review of Deficiency**

As provided in Rule 4803(a)(1)(A), the staff of the Listing Department 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 4310(c)(2)(B)(i) and (iii)

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

- Rule 4310(c)(6)
- Rule 4310(c)(7) (but only as to the number of publicly held shares, and not as to such shares' market value)
- Rules 4320(e)(2)(B)(i) and (iii)
- Rules 4320(e)(4) and (5) (but only as to the number of publicly held shares, and not as to such shares' market value)
- Rules 4450(a)(1), (3), and (4)
- Rules 4450(b)(1)(B), (b)(2), and (b)(5), and
- Rules 4450(h)(1) and (4).

In a case where an issuer fails to comply with the requirement of Rules 4310(c)(2)(B)(iii), 4320(e)(2)(B)(iii), or 4450(b)(1)(B), the Listing Department shall not accept a plan to achieve compliance with those requirements in the future, 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, an issuer may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. An issuer cited for non-compliance with these requirements may, however, submit a plan that demonstrates current or near-term compliance with Rules 4310(c)(2)(B)(i), 4320(e)(2)(B)(i), or 4450(a)(3) (i.e., the alternative listing requirement relating to stockholders' equity), or Rules 4310(c)(2)(B)(ii), 4320(e)(2)(B)(ii), or 4450(b)(1)(A) (i.e., the alternative listing requirement relating to market value of listed securities).

Adopted by SR-NASD-2004-125 eff. Aug. 26, 2005.

#### **4804. Written Notice of Staff Determination**

(a) If the Listing Department reaches a determination to limit or prohibit the initial or continued listing of an issuer's securities or to issue a public reprimand letter, it shall prepare and provide to the issuer a Staff Determination that shall describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer shall be provided an opportunity for a hearing under this Rule 4800 Series.

(b) An issuer that receives a Staff Determination . . . under Rule 4804(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's Market Watch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Staff Determination.

(c) If review under the Rule 4800 Series of a Staff Determination described in Rule 4801(k)(1) is pending and the Listing Department identifies the existence of one or more additional deficiencies with respect to the issuer, the Listing Department shall prepare and provide to the issuer a Staff Determination with respect to such additional deficiencies. If the new Staff Determination is issued prior to a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall notify the issuer that it should present its views with respect to the additional deficiencies at the Panel hearing. If the new Staff Determination is issued after a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall inform the issuer that it should present its views with respect to the additional

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

deficiencies in writing within the period specified in the Staff Determination, to allow review of the additional deficiencies as provided under Rule 4802(d).

(d) If review under the Rule 4800 Series of a public reprimand letter is pending and the Listing Department identifies the existence of one or more additional deficiencies with respect to the issuer, the Listing Department shall review the additional deficiencies as provided in Rule 4803.

Amended by SR-NASD-2005-136 eff. Nov. 17, 2005.  
Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2000-48 eff. Nov. 9, 2000.  
Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4805. Request for Hearing**

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with the Hearings Department. A request for a hearing shall stay the delisting action pending the issuance of a . . . Panel Decision. If no hearing is requested within the seven calendar day period, the right to request review is waived, and the Staff Determination shall take immediate effect. All hearings shall be held before a Listing Qualifications Panel as described in Rule 4806. All hearings shall be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department shall make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer shall be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Hearings Department stating the specific grounds for the issuer's contention that the Staff Determination was in error or requesting that the Listing Qualifications Panel grant an exception, as permitted by Rule 4802. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Staff Determination.

(c) Within 15 calendar days of the date of the Staff Determination, but in no event after the time of the hearing, the issuer must submit a hearing fee to The Nasdaq Stock Market, Inc., to cover the cost of holding the hearing, as follows:

(1) where consideration is on the basis of written submission from the issuer, \$4,000; or

(2) where consideration is on the basis of an oral hearing, whether in person or by telephone, \$5,000.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2004-147 eff. Jan. 1, 2005.  
Amended by SR-NASD-2003-44 eff. Nov. 23, 2003.  
Amended by SR-NASD-2001-17 eff. May 31, 2001.  
Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4806. The Listing Qualifications Panel**

(a) All hearings shall be conducted before a Listing Qualifications Panel. Prior to the hearing, the Listing Qualifications Panel shall review the written record, as defined in Rule 4811. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons. Hearings are generally scheduled to last one hour, but may be extended at the discretion of the Listing Qualifications Panel. The Listing Qualifications Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings shall be kept. The record of proceedings before a Listing Qualifications Panel shall be kept by the Hearings Department.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(b) After the hearing, the Listing Qualifications Panel shall issue a Panel Decision that meets the requirements of Rule 4811, and, except as provided in paragraph (c), each member of the Listing Qualifications Panel shall affirmatively approve it. The Panel Decision shall be promptly provided to the issuer and is effective immediately unless it specifies to the contrary. The Panel Decision shall provide notice that the issuer may request review of the Panel Decision by the Listing Council within 15 calendar days of the date of the Panel Decision and that the Panel Decision may be called for review by the Listing Council within 45 calendar days from the date of the Panel Decision pursuant to Rule 4807.

(c) If, following the hearing, the Listing Qualifications Panel cannot reach an unanimous decision regarding the matter under review, a Panel Decision shall not be issued and the issuer shall be notified of this circumstance. Thereafter, the issuer shall be provided an additional hearing before a Listing Qualifications Panel composed of three persons who did not participate in the previous hearing. The issuer may determine whether the hearing shall be conducted based on the written record or an oral hearing, whether in person or by telephone. The issuer may submit any documents or other written material in support of its request for review, including any information not available at the time of the initial hearing before the Listing Qualifications Panel. There shall be no fee for the new hearing. After a hearing of a Listing Qualifications Panel convened pursuant to this paragraph (c), the Listing Qualifications Panel shall issue a Panel Decision that meets the requirements of Rule 4811 and that has been affirmatively approved by at least a majority of the Listing Qualifications Panel.

(d)(1) In the event that:

(A) a Listing Qualifications Panel exercises its authority under Rule 4802(b) to grant an exception from listing standards in the Rule 4000 Series requiring the issuer to maintain certain levels of stockholders' equity or to timely file periodic reports with the Commission; and

(B) within one year following the date on which the issuer regains compliance with such listing standard, the issuer is found by the Listing Department to be out of compliance with the requirement that was the subject of the exception, and the Panel has not opted to monitor the issuer pursuant to Rule 4806(d)(2),

then, notwithstanding Rule 4803, the issuer shall not be permitted to provide the Listing Department with a plan to regain compliance, and the Listing Department shall not be permitted to grant additional time for the issuer to regain compliance. The Listing Department shall provide the issuer with a Staff Determination, and the issuer may request review by a Panel pursuant to Rule 4805. The Panel shall consider the prior non-compliance when rendering its decision.

(2) In the event that a Listing Qualifications Panel exercises its authority under Rule 4802(b) to grant an exception from any listing standard in the Rule 4000 Series and the issuer regains compliance with all applicable listing standards, the Panel may nevertheless monitor the issuer's continued compliance for a period of up to one year following the date on which the issuer regains compliance if the 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 Panel or the Listing Department determines that an issuer that is being monitored fails to satisfy any listing standards during the monitoring period, the Panel (or a newly convened Panel if the initial Panel is unavailable) shall promptly schedule an oral hearing with respect to such failure pursuant to Rule 4806(a) (unless the issuer requests consideration based on written submission in lieu of an oral hearing). Notwithstanding Rule 4803, the issuer shall not be permitted to provide the Listing Department with a plan to regain compliance with respect to any new deficiency that arises during the monitoring period, and the Listing Department shall not be permitted to grant additional time for the issuer to regain compliance with respect to any such new deficiency. The Panel shall consider the prior non-compliance when rendering its decision.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

Amended by SR-NASD-2004-018 eff. Apr. 7, 2004.

Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4807. Review by the Nasdaq Listing and Hearing Review Council**

(a) . . . The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of Appeals and Review. The request shall not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of \$4,000 to The Nasdaq Stock Market, Inc. to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of Appeals and Review shall make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(b) The Listing Council may also consider any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The issuer shall be promptly informed of the reasons for the review and shall be provided a deadline to provide a written submission if the issuer wishes. The institution of discretionary review by the Listing Council shall not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. At the sole discretion of the Listing Council, the call for review of a Panel Decision may be withdrawn at any time prior to the issuance of a decision.

(c) The Listing Council shall consider the written record and, at its discretion, hold additional hearings. Any hearing shall be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listing Council, is made. The Listing Council may also recommend that the NASD Board . . . consider the matter. The record of proceedings before the Listing Council shall be kept by the Nasdaq Office of Appeals and Review.

(d) In each proceeding before the Listing Council, a subcommittee consisting of at least two members of the Listing Council shall review the complete written record. Members of the Listing Council who are not on a subcommittee shall be provided with a written summary of the record prepared by an Advisor, and may, but shall not be required to, review the complete written record.

(e) The Listing Council shall issue a Listing Council Decision that affirms, modifies, or reverses the Panel Decision or that remands the matter to the Listing Department or to the Listing Qualifications Panel for further consideration. The Listing Council Decision shall be affirmatively approved by at least a majority of the Listing Council and shall meet the requirements of Rule 4811. The Listing Council Decision shall provide notice that the NASD Board may call the Listing Council Decision for review at any time before its next meeting which is at least 15 calendar days following the issuance of the Listing Council Decision. The Listing Council Decision shall be promptly provided to the issuer and shall take immediate effect unless it specifies to the contrary.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2001-17 eff. May 31, 2001.  
Amended by SR-NASD-2001-02 eff. March 8, 2001.  
Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4808. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council**

(a) An issuer may request that the Listing Qualifications Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Panel Decision. An issuer's request for reconsideration shall not stay a Listing Qualifications Panel delisting determination unless the Listing Qualifications Panel issues a written determination staying the delisting prior to the scheduled date for delisting. An issuer's request for reconsideration shall not toll the time period set forth in Rule 4807(a) for the issuer to initiate the Listing Council's review of the Panel Decision. If the Listing Qualifications Panel grants an issuer's reconsideration request, the Listing Qualifications Panel shall issue a modified decision meeting the requirements of Rule 4806(b) within 15 calendar days following the issuance of the original Panel Decision or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the issuer has requested reconsideration by the Listing Qualifications Panel, the Listing Council, in its discretion, may assert jurisdiction over the Panel Decision or may permit the Listing Qualifications Panel to proceed with the reconsideration.

(b) An issuer may request that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Listing Council Decision. If the Listing Council grants an issuer's reconsideration request, the Listing Council shall issue a modified decision meeting the requirements of Rule 4807(e) within 15 calendar days following the issuance of the original Listing Council Decision or lose jurisdiction over the matter.

(c) The Listing Qualifications Panel and the Listing Council may correct clerical or other non-substantive errors in their respective decisions either on their own motion or at the request of an issuer.



Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Adopted by SR-NASD-2004-18 eff. Apr. 7, 2004.

### **4809. Discretionary Review by NASD Board**

(a) A Listing Council Decision may be called for review by the NASD Board solely upon the request of one or more Governors not later than the next NASD Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review shall be undertaken solely at the discretion of the NASD Board.

(b) If the NASD Board conducts a discretionary review, the review generally shall be based on the written record considered by the Listing Council. However, the NASD Board may, at its discretion, request and consider additional information from the issuer and/or from staff of the Listing Department. If the Board considers additional information, the record of proceedings before the NASD Board shall be kept by the Nasdaq Office of Appeals and Review.

(c) If the NASD Board conducts a discretionary review, the issuer shall be provided with a written decision that meets the requirements of Rule 4811. The NASD Board may affirm, modify or reverse the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or staff of the Listing Department with appropriate instructions. Unless the matter is remanded, the NASD Board's decision represents the final action of the Association and shall take immediate effect unless it specifies to the contrary.

(d) If the NASD Board declines to conduct a discretionary review or withdraws its call for review, the issuer shall be promptly provided with written notice that the Listing Council Decision represents the final action of the Association.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.  
Amended by SR-NASD-2001-02 eff. March 8, 2001.  
Adopted by SR-NASD-98-88 eff. May 4, 1999.

### **4811. Record on Review; Contents of Decisions**

(a) Documents in the written record may consist of the following items, as applicable: correspondence between Nasdaq and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer or the Listing Department, including any written request for an exception as permitted in Rule 4802(b) and any response thereto. Any additional information requested from the issuer or staff of the Listing Department by the Listing Qualifications Panel, Listing Council, or NASD Board as part of the review process shall be included in the written record. The written record shall be supplemented by the transcript of any hearings held during the review process and each decision issued. At each level of review under this Rule 4800 Series, the issuer shall be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for issuer submissions, unless the issuer waives such production.

(b) In addition to the documents described in paragraph (a), if any additional information is considered as permitted in Rule 4802(c), that information, and any written submission addressing the significance of that information, shall be made part of the record.

(c) If additional issues arising under the Rule 4000 Series are considered, as permitted in Rule 4802, the notice of such consideration and any response to such notice shall be made a part of the record.

(d) Each Panel Decision, Listing Council Decision, and decision of the NASD Board shall include:

(1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Department;

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(2) the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer is alleged to have failed to satisfy;

(3) a statement setting forth the findings of fact with respect to the issuer;

(4) the conclusions of the Adjudicatory Body as to whether the issuer has failed to satisfy the quantitative standards or qualitative considerations set forth in the Rule 4000 Series;

(5) a statement of the Adjudicatory Body in support of the disposition of the principal issues raised by the issuer in the proceeding, and, if applicable, any exception to the Rule 4000 Series as permitted by Rule 4802(b) and the rationale therefor.

(e) If a Panel Decision, Listing Council Decision, or decision of the NASD Board concludes that the issuer has failed to satisfy the quantitative standards or qualitative considerations set forth in the Rule 4000 Series, the decision shall either:

(1) grant an exception to the Rule 4000 Series as permitted by Rule 4802(b);

(2) limit or prohibit the initial or continued listing of the issuer's securities; or

(3) serve as a public reprimand letter in a case where the Adjudicatory Body determines that the issuer has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Securities Exchange Act of 1934) and that delisting is not an appropriate sanction. In determining whether to issue a public reprimand letter, the Adjudicatory Body shall consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the issuer reasonably relied on an independent advisor and whether the issuer has demonstrated a pattern of violations.

(f) An issuer that receives an Adjudicatory Body decision that serves as a public reprimand letter as described in Rule 4811(e)(3) shall 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, an issuer shall provide such disclosure to Nasdaq's Market Watch Department, the Listing Department, and the Hearings Department. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the decision.

Amended by SR-NASD-2005-136 eff. Nov. 11, 2005.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4812. Document Retention Procedures**

Any document submitted to Nasdaq or the NASD in connection with a Rule 4800 proceeding shall be retained in accordance with applicable record retention policies.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4813. Delivery of Documents**

Delivery of any document under this Rule 4800 Series . . . may be made by electronic delivery, hand delivery. . . , . . . facsimile, or overnight courier. . . . Delivery shall be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If an issuer has not specified a facsimile number, email address, or street address, delivery shall be made to the last known facsimile number, email address, and street address. If an issuer is represented by counsel or a representative, delivery may be made to the counsel or representative.

Amended by SR-NASD-2005-153 eff. Jan. 23, 2006.

Amended by SR-NASD-2004-125 eff. Aug. 26, 2005.

Amended by SR-NASD-2004-018 eff. Apr. 7, 2004.

Adopted by SR-NASD-98-88 eff. May 4, 1999.

## **4816. Recusal or Disqualification**

(a) No person shall serve as a member of a Listing Qualifications Panel, or participate as a member of the Listing Council, the NASD Board, or the staff of the Listing Department, 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 shall recuse himself or herself, or shall be disqualified as follows:

### **(1) NASD Board**

The Chair of the NASD Board shall have authority to order the disqualification of a Governor, and a majority of the NASD Board excluding the Chair of the NASD Board shall have authority to order the disqualification of the Chair.

### **(2) Listing Council**

A Chair of the Listing Council shall 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 shall have authority to order the disqualification of a Chair of the Listing Council.

### **(3) Staff of Listing Department; Panelist of Listing Qualifications Panel**

The General Counsel of Nasdaq shall have authority to order the disqualification of (A) a member of the staff of the Listing Department reviewing the qualifications of an issuer, or (B) a member of a Listing Qualifications Panel.

(b) At least five days prior to any proceeding under the Rule 4800 Series, the issuer shall provide the Hearings Department or the Advisor to the Listing Council or the NASD Board, as applicable, with names and biographical information of each person that will appear on behalf of the issuer at the proceeding, and the Hearings Department or such Advisor, as applicable, shall provide the issuer with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the NASD 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 issuer.

(c) An issuer or the staff of the Listing Department may file a request to disqualify an Adjudicator. Such a request shall 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 shall 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. Such a request shall be filed (1) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (2) if the name and biographical information of the Adjudicator has been posted on a website, not later than two business days after the issuer requested Listing Council review or received notice of discretionary review by the Listing Council or the NASD Board. A request for disqualification of an Adjudicator shall be decided by the party with authority to order disqualification of such Adjudicator, who shall promptly investigate whether disqualification is required and issue a written response to the request.

Adopted by SR-NASD-2004-125 eff. Aug. 26, 2005.

## **6110. Definitions**

(a) The term "Reportable Security" shall mean all Nasdaq Global Market and Nasdaq Capital Market securities, all Consolidated Quotation Service (CQS) securities traded in the over-the-counter market, all OTC Equity Securities as defined in Rule 6600, and all Direct Participation Programs as defined in Rule 6910.

(b) The term "Reporting Market Maker" shall mean a member of the Association that is registered as a Nasdaq or CQS Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(c) The term "Reporting Order Entry Firm" shall mean a member of the Association that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(d) Reserved

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

- (e) The term "Browse" shall mean the function of the Nasdaq Market Center that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the ACT Users Guide.
- (f) The term "Clearing Broker/Dealer" or "Clearing Broker" shall mean the member firm that has been identified in the Nasdaq Market Center system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.
- (g) The term "Correspondent Executing Broker/Dealer" or "Correspondent Executing Broker" shall mean the member firm that has been identified in the Nasdaq Market Center system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.
- (h) The terms "Gross Dollar Thresholds" or "Super Caps" in the risk management application of the Nasdaq Market Center shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the Nasdaq Market Center system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades, including those aggregated from transactions in all automated systems owned and operated by the Association or its subsidiaries, equals or exceeds any gross dollar threshold, the system will alert the clearing broker.
- (i) The term "Introducing Broker/Dealer" or "introducing broker" shall mean the member firm that has been identified in the Nasdaq Market Center system as a party to the transaction, but does not execute or clear trades.
- (j) The term "Participant" shall mean any member of the Association in good standing that uses the Nasdaq Market Center system as a Market Maker registered as a Nasdaq or CQS Market Maker according to the requirements of Rule 4611 or Rule 6320, an OTC market maker (as defined in Rule 6610(d)), an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.
- (k) The term "Parties to the Transaction" shall mean the executing brokers, introducing brokers and clearing brokers, if any.
- (l) The term "Pre-alert" shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of any purchase or sale gross dollar amount. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the Participants.
- (m) The term "Reportable Nasdaq Market Center Transaction" shall mean inter-dealer transactions, including those for less than one round lot, in a Reportable Security, and shall also include transactions that are required or eligible to be submitted to the Nasdaq Market Center pursuant to the Rule 4630, 4640, 4650, 5400, 6400, 6600, and 6900 Series.
- (n) The term "Reporting Party" shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the Nasdaq Market Center contained in Rule 6130.
- (o) The term "Single Trade Limit" shall mean the pre-established dollar amount established by the Association for a single trade that enables a Nasdaq Market Center clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of fifteen (15) minutes to review and agree or decline to act as principal for clearing that trade. The Association reserves the right to modify the time frame for clearing broker review as necessary and upon prior notification to the Participants.
- (p) The terms "Participant," "Reporting Order Entry Firm," "correspondent executing broker/dealer," "correspondent executing broker," "introducing broker/dealer," "introducing broker," "clearing broker/dealer," and "clearing broker" shall also include, where appropriate, the Non-Member Clearing Organizations and UTP Exchanges listed in Rules 6120(a)(5) and (a)(6) below and their qualifying members.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(q) The term "Reporting ECN" shall mean a member of the Association that is an electronic communications network that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the Nasdaq Market Center.

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-2004-034 eff. Feb. 25, 2004.  
Amended by SR-NASD-2003-098 eff. Sept. 4, 2003.  
Amended by SR-NASD-2003-029 eff. March 3, 2003.  
Amended by SR-NASD-2002-097 eff. July 29, 2002.  
Amended by SR-NASD-2002-035 eff. March 7, 2002.  
Amended by SR-NASD-96-08 eff. Jan 7, 1997.  
Amended by SR-NASD-94-55 eff. Apr. 19, 1995.  
Amended by SR-NASD-92-12 eff. Sept. 6, 1994.  
Amended eff. Dec. 7, 1989; Oct. 26, 1990; Dec. 13, 1990; Mar. 4, 1992; Apr. 16, 1992; June 15, 1992; Mar. 22, 1993.  
Adopted Sept. 7, 1989.

## **6120. Trade Reporting Participation Requirements**

### **(a) Mandatory Participation for Clearing Agency Members**

(1)(A) Participation in the trade reporting service of the Nasdaq Market Center is mandatory for all members that execute transactions using the execution services of the Nasdaq Market Center or ACES.

(B) Participation in trade reporting service of the Nasdaq Market Center is mandatory for members that are participants of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for members that have a clearing arrangement with such a participant, unless a member subscribes to TRACS. Such participation in the Nasdaq Market Center shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) Participation in the trade reporting service of the Nasdaq Market Center as a Market Maker shall be conditioned upon the Reporting Market Maker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, an ACT Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Act;

(C) registration as a Market Maker for Nasdaq or CQS securities pursuant to Rule 4611 or Rule 6320, if applicable, and compliance with all applicable rules and operating procedures of the Association and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the Reporting Market Maker to prevent unauthorized entry of information into the Nasdaq Market Center; and

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

(3) Participation in the trade reporting service of the Nasdaq Market Center as a Reporting Order Entry Firm shall be conditioned upon the Reporting Order Entry Firm's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, an ACT Participant Application Agreement;

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of the Association and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the Reporting Order Entry Firm to prevent the unauthorized entry of information into the Nasdaq Market Center; and

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

(4) Participation in the trade reporting service of the Nasdaq Market Center as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, an ACT Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of the Association and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the Nasdaq Market Center; and

(E) acceptance and settlement of each trade that the Nasdaq Market Center identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(5)(A) Upon compliance with the conditions specified in subparagraph (B) below, access to and participation in the trade reporting service of the Nasdaq Market Center shall be granted to the following Non-Member Clearing Organizations:

(i) West Canada Clearing Corporation; and

(ii) The Canadian Depository for Securities.

(B) Non-Member Clearing Organization access to and participation in the trade reporting service of the Nasdaq Market Center shall be conditioned upon the Organization's initial and continuing compliance with the following requirements:

(i) execution of and continuing compliance with a Non-Member Clearing Organization ACT Participation Application Agreement;

(ii) a Non-Member Clearing Organization shall only have access to the trade reporting service of the Nasdaq Market Center to operate as a service bureau for its members functioning as Reporting Order Entry Firms, Correspondent Executing Broker/Dealers, Correspondent brokers, Clearing Broker/Dealers, or Clearing Brokers, as those terms are defined in Rule 6110;

(iii) registration as a clearing agency pursuant to the Act, membership in a clearing agency registered pursuant to the Act, or maintenance of an effective clearing arrangement with a registered clearing agency;

(iv) compliance with all applicable rules and operating procedures of the Association and the Commission;

(v) maintenance of the physical security of the equipment located on the premises of the Non-Member Clearing Organization to prevent the unauthorized entry of information into the Nasdaq Market Center; and

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(vi) a Non-Member Clearing Organization may only participate in the trade reporting service of the Nasdaq Market Center on behalf of its members who have:

- a. executed a Non-Member ACT Access Participant Application Agreement and
- b. have been in continuing compliance with such agreement.

(C) A Non-Member Clearing Organization may permit its members functioning as Reporting Order Entry Firms to have direct access to the trade reporting service of the Nasdaq Market Center provided the member of the Non-Member Clearing Organization complies with the following requirements:

- (i) execution of a Non-Member ACT Participant Application Agreement;
- (ii) membership in a Non-Member Clearing Organization listed in paragraph (a)(5)(A) above; and
- (iii) compliance with paragraph (a)(3)(C) through (E) above.

(D) A Non-Member Clearing Organization may permit its members functioning as Clearing Brokers to have direct access to the trade reporting service of the Nasdaq Market Center provided the member of the Non-Member Clearing Organization complies with the following requirements:

- (i) execution of a Non-Member ACT Participant Application Agreement;
- (ii) membership in a Non-Member Clearing Organization listed in paragraph (a)(5)(A) above; and
- (iii) compliance with paragraph (a)(4)(C) through (E) above.

(6) Upon compliance with the conditions specified in subparagraphs (A)–(E) below, access to and participation in the trade reporting service of the Nasdaq Market Center may be granted to a national securities exchange that trades Nasdaq Global Market or Capital Market securities on an unlisted trading privileges basis ("UTP Exchange"). The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by a UTP Exchange ACT Participant Application Agreement. Such access may be made available on terms that differ from the terms applicable to members but that do not unreasonably discriminate among national securities exchanges.

(A) execution of, and continuing compliance with, a UTP Exchange ACT Participant Application Agreement;

(B) continuing compliance with UTP Exchange ACT Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission;

(C) maintenance of the physical security of the equipment located on the premises of the UTP Exchange to prevent the unauthorized entry of information into the Nasdaq Market Center;

(D) acceptance and settlement of each trade that the Nasdaq Market Center identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date; and

(E) A UTP Exchange shall not permit its members to have direct access to the Nasdaq Market Center without the express written consent of the Association.

(7) Each Participant shall be obligated to inform the Association of non-compliance with any of the participation requirements set forth above.

**(b) Participant Obligations**

**(1) Access**

Upon execution and receipt by the Association of the ACT Participant application agreement, a Participant may commence input and validation of trade information in Reportable Securities. Participants

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

may access the service via Nasdaq terminals or Workstations or through computer interface during the hours of operation specified in the ACT Users Guide. Prior to such input, all Participants, including those that have trade report information submitted to Nasdaq by any third party, must obtain from Nasdaq a unique identifying Market Participant Symbol ("MPID"), and use that identifier for trade reporting and audit trail purposes.

**(2) Market Maker Obligations**

(A) Reporting Market Makers shall commence participation in the Nasdaq Market Center by initially contacting the Nasdaq Operation Center to verify authorization for submitting trade data to the Nasdaq Market Center system for Reportable Securities.

(B) A Reporting Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the Nasdaq Market Center system identifies as having been effected by that Market Maker.

(C) A Reporting Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a Participant and notify the Nasdaq Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised ACT Participant Application Agreement.

(D) If at any time a Reporting Market Maker fails to maintain a clearing arrangement, it shall be removed from the Nasdaq Market Center system, and be precluded from participation as a Market Maker pursuant to the requirements of the Rule 4700 and 6300 Series until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended ACT Participant Application Agreement, is filed with the Association. If, however, the Association finds that the Reporting Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619 and the Rule 4700 Series.

**(3) Order Entry Firm Obligations**

(A) Reporting Order Entry Firms shall commence participation in the Nasdaq Market Center by initially contacting the Nasdaq Operation Center to verify authorization for submitting trade data to the Nasdaq Market Center system for Reportable Securities.

(B) A Reporting Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the Nasdaq Market Center system identifies as having been effected by the Order Entry Firm.

(C) A Reporting Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a Participant and notify the Nasdaq Operation Center if its clearing broker is to be changed; this change will necessitate execution of a revised ACT Participant Application Agreement.

(D) If at any time a Reporting Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the Nasdaq Market Center system until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended ACT Participant Application Agreement, is filed with the Association.

**(4) Clearing Broker Obligations**

(A) Nasdaq Market Center clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the Nasdaq Operation Center and affirmative action has been completed by the Center to remove the clearing broker from the Nasdaq Market Center for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).

(B) Nasdaq Market Center clearing brokers may utilize the Nasdaq Market Center Risk Management functions upon execution of the ACT Participant Risk Management Agreement. Clearing brokers that utilize



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

the Nasdaq Market Center Risk Management functions may establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. Nasdaq Market Center clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds any gross dollar threshold and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of any daily threshold.

(C) For trades effected by a correspondent executing broker that equal or exceed a Single Trade Limit, clearing brokers have fifteen (15) minutes from the time of trade report input to the Nasdaq Market Center to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within fifteen (15) minutes, the trade report will be subject to processing in accordance with the pre-established criteria described in Rule 6150(b)(6).

(D) If at any time a Nasdaq Market Center clearing broker fails to maintain a clearing arrangement, it shall be removed from the Nasdaq Market Center system until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended ACT Participant Application Agreement, is filed with the Association.

Amended by SR-NASD-2006-068 eff. July 1, 2006.  
Amended by SR-NASD-2005-108 eff. Sep. 8, 2005.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Amended by SR-NASD-2003-085 eff. Sept. 29, 2003.  
Amended by SR-NASD-2003-029 eff. March 3, 2003.  
Amended by SR-NASD-2002-097 eff. July 29, 2002.  
Amended by SR-NASD-2002-035 eff. March 7, 2002.  
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.  
Amended by SR-NASD-98-60 eff. according to schedule in Rule 6957.  
Amended by SR-NASD-98-47 eff. July 9, 1998.  
Amended by SR-NASD-95-49 eff. Mar. 4, 1996.  
Amended by SR-NASD-94-55 eff. Apr. 19, 1995.

**Selected Notice:** 98-82.

## **6430. Suspension of Trading**

(a) Members shall promptly notify the Association whenever they have knowledge of any matter related to an eligible security or the issuer thereof which has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Whenever any market for any eligible security halts or suspends trading in such security, members may continue to conduct trading in such security during the period of any such halt or suspension and shall continue to report all last sale prices reflecting transactions in such security, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120.

Amended eff. May 15, 1991; Aug. 5, 1991.

## **6440. Trading Practices**

**Amendments to this rule have been approved, but the effective date has not yet been announced. To view this version of the rule click the "Approved Rule Changes, Effective Date Pending" tab to the right.**

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any eligible security at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

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

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

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

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

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

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

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

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

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

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

...

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

(1) Name of the account, with names of all participants and their respective interests in profits and losses;

(2) a statement regarding the purpose of the account;

(3) name of the member carrying and clearing the account; and

(4) a copy of any written agreement or instrument relating to the account.

(g) No member shall offer that a transaction or transactions to buy or sell an eligible security will influence the closing transaction on the Consolidated Tape.

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

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

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

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

(i) No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

Amended by SR-NASD-2005-124 eff. Jan. 9 2006.

Amended by SR-NASD-97-20 eff. April 14, 1998.

Amended by SR-NASD-97-53 eff. Dec. 16, 1997.

Amended by SR-NASD-95-30 eff. Dec. 20, 1995.

**Selected Notice:** 96-9.

## **6951. Definitions**

For purposes of Rules 6950 through 6957:

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

- (a) Terms shall have the same meaning as those defined in the By-Laws and Rules of the Association, unless otherwise specified.
- (b) "Association" shall mean the National Association of Securities Dealers, Inc. and its subsidiaries, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.
- (c) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (d) "Customer" shall mean a person other than a broker or dealer.
- (e) "Nasdaq Market Center" shall mean the service provided by Nasdaq that, among other things, provides for the reporting of transactions in Nasdaq securities.
- (f) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Securities Exchange Act Rule 11Ac1-1(a)(8).
- (g) "Electronic Order" shall mean an order captured by a member in an electronic order-routing or execution system.
- (h) "Index Arbitrage Trade" shall mean an arbitrage trading strategy involving the purchase or sale of a "basket" or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange Rule 80A.
- (i) "Manual Order" shall mean an order that is captured by a member other than in an electronic order-routing or execution system.
- (j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.
- (k) "Order Audit Trail System" shall mean the automated system owned and operated by the Association that is designed to capture order information reported by members for integration with trade information reported to the Nasdaq Market Center and quotation information disseminated by members in order to provide the Association with an accurate time sequenced record of orders and transactions.
- (l) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.
- (m) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6955.
- (n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:
- (1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;
  - (2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;
  - (3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and
  - (4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

Amended by SR-NASD-2006-040 eff. July 10, 2006.  
Amended by SR-NASD-2000-23 eff. July 10, 2006.  
Amended by SR-NASD-2004-076 eff. May 5, 2004.  
Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notices:** 98-33, 05-78, 06-15.

## **6952. Applicability**

(a) Unless otherwise indicated, the requirements of Rules 6953 through 6957 are in addition to the requirements contained in the By-Laws and Rules of the Association.

(b) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all brokers and dealers admitted to membership in the Association and to their associated persons.

(c) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all executed or unexecuted orders for equity securities traded in The Nasdaq Stock Market.

Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notice:** 98-33.

## **6953. Synchronization of Member Business Clocks**

Each member shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the By-Laws or other rules of the Association, with reference to a time source as designated by the Association, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Association.

Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notice:** 98-33.

## **6954. Recording of Order Information**

### **(a) Procedures**

(1) Subject to the terms and conditions contained in Rules 6952 through 6957, each Reporting Member shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another member, or from one department to another within the same member, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Association from time to time.

### **(4) Maintaining and Preserving Records**

(A) Each Reporting Member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

**(b) Order Origination and Receipt**

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

- (1) an order identifier meeting such parameters as may be prescribed by the Association assigned to the order by the Reporting Member that uniquely identifies the order for the date it was received;
- (2) the identification symbol assigned by the Association to the security to which the order applies;
- (3) the market participant symbol assigned by the Association to the Reporting Member;
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;
- (5) where the order is originated by a Reporting Member, the identification of the department of the member that originates the order;
- (6) where the Reporting Member is a party to an agreement described in Rule 6955(c), the identification of the Reporting Agent;
- (7) the number of shares to which the order applies;
- (8) the designation of the order as a buy or sell order;
- (9) the designation of the order as a short sale order;
- (10) the designation of the order as a market order, limit order, stop order or stop limit order;
- (11) any limit or stop price prescribed in the order;
- (12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;
- (13) the time limit during which the order is in force;
- (14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Rule 11Ac1-4(c) under the Securities Exchange Act of 1934;
- (15) special handling requests, specified by the Association for purposes of this Rule;
- (16) the date and time the order is originated or received by a Reporting Member;
- (17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade; and
- (18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the Association, for which the order is submitted.

**(c) Order Transmittal**

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a department within the member, . . . the Reporting Member shall record:

- (A) the order identifier assigned to the order by the Reporting Member,
  - (B) the market participant symbol assigned by the Association to the Reporting Member,
  - (C) the date the order was first originated or received by the Reporting Member,
  - (D) an identification of the department and nature of the department to which the order was transmitted, . . .
  - (E) the date and time the order was received by that department,
  - (F) the number of shares to which the transmission applies, and
  - (G) any special handling requests.
- (2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:
- (A) the transmitting Reporting Member shall record:
    - (i) the order identifier assigned to the order by the Reporting Member,
    - (ii) the market participant symbol assigned by the Association to the Reporting Member,
    - (iii) the market participant symbol assigned by the Association to the member to which the order is transmitted,
    - (iv) the date the order was first originated or received by the Reporting Member,
    - (v) the date and time the order is transmitted, and (vi) the number of shares to which the transmission applies; and
  - (B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order:
    - (i) the order identifier assigned to the order by the member that transmits the order and
    - (ii) the market participant symbol assigned by the Association to the member that transmits the order.

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

- (A) the transmitting Reporting Member shall record:
- (i) the fact that the order was transmitted to an Electronic Communications Network,
  - (ii) the order identifier assigned to the order by the Reporting Member,
  - (iii) the market participant symbol assigned by the Association to the Reporting Member,
  - (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,
  - (v) the date the order was first originated or received by the Reporting Member,
  - (vi) the date and time the order is transmitted, and
  - (vii) the number of shares to which the transmission applies; and
- (B) the receiving Reporting Member operating the Electronic Communications Network shall record:
- (i) the fact that the order was received by an Electronic Communications Network,
  - (ii) the order identifier assigned to the order by the member that transmits the order,
  - (iii) the market participant symbol assigned by the Association to the transmitting Reporting Member,
- and
- (iv) other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

- (A) the transmitting Reporting Member shall record:
- (i) the fact that the order was transmitted manually,
  - (ii) the order identifier assigned to the order by the Reporting Member,
  - (iii) the market participant symbol assigned by the Association to the Reporting Member,
  - (iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,
  - (v) the date the order was first originated or received by the Reporting Member,
  - (vi) the date and time the order is transmitted,
  - (vii) the number of shares to which the transmission applies, and
  - (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order:

- (i) the fact that the order was received manually, and
- (ii) the market participant symbol assigned by the Association to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

- (A) the transmitting Reporting Member shall record:
- (i) the fact that the order was transmitted manually,
  - (ii) the order identifier assigned to the order by the Reporting Member,
  - (iii) the market participant symbol assigned by the Association to the Reporting Member,

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record:

(i) the fact that the order was received manually,

(ii) the market participant symbol assigned by the Association to the transmitting Reporting Member, and

(iii) other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(6) When a member transmits an order to a non-member, the Reporting Member shall record:

(A) the fact that the order was transmitted to a non-member,

(B) the order identifier assigned to the order by the Reporting Member,

(C) the market participant symbol assigned by the Association to the Reporting Member,

(D) the date the order was first originated or received by the Reporting Member,

(E) the date and time the order is transmitted,

(F) the number of shares to which the transmission applies, and

(G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member.

**(d) Order Modifications, Cancellations, and Executions**

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) When a Reporting Member modifies or receives a modification to the terms of the order, the Reporting Member shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification:

(A) the order identifier assigned to the order by the Reporting Member prior to the modification,

(B) the date and time the modification was originated or received, and

(C) the date the order was first originated or received by the Reporting Member.

(2) When the Reporting Member cancels or receives a cancellation of an order, in whole or part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by the Association to the Reporting member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the date and time the cancellation was originated or received,

*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

(E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and

(F) whether the order was canceled on the instruction of a customer or the Reporting Member.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by NASD to the Reporting Member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the Reporting Member's number assigned for purposes of identifying transaction data in the Nasdaq Market Center,

(E) the designation of the order as fully or partially executed,

(F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) the identification number of the terminal where the order was executed,

(H) the date and time of execution;

(I) the execution price,

(J) the capacity in which the member executed the transaction (e.g., agency, principal or riskless principal), and

(K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

Amended by SR-NASD-2006-040 eff. July 10, 2006.

Amended by SR-NASD-2000-23 eff. July 10, 2006.

Amended by SR-NASD-2004-137 eff. Feb. 14, 2005.

Amended by SR-NASD-2004-023 eff. Oct. 4, 2004.

Amended by SR-NASD-2004-076 eff. May 5, 2004.

Amended by SR-NASD-2002-097 eff. July 29, 2002.

Amended by SR-NASD-98-38 eff. according to schedule in Rule 6957.

Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notices:** 98-33, 98-73, 04-48, 04-85, 05-78, 06-15.

## **6955. Order Data Transmission Requirements**

### **(a) General Requirement**

All applicable order information required to be recorded under Rule 6954 shall be transmitted to the Order Audit Trail System by each Reporting Member or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

### **(b) Method of Transmitting Data**

(1) Order information shall be transmitted in electronic form, as may be prescribed by the Association from time to time, to a receiving location designated by the Association.

(2) Each Reporting Member shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 6954(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred, or with respect to any such information that is not available on such day, on the day that such information first becomes available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Association.



*Predecessor NASD Rules as they appeared in the NASD manual on July 31, 2006.*

**(c) Reporting Agent Agreements**

(1) Any Reporting Member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(2) All written documents evidencing an agreement described in subparagraph (1) shall be maintained by each party to the agreement.

(3) Each Reporting Member remains primarily responsible for compliance with the requirements of this rule, notwithstanding the existence of an agreement described in this paragraph.

Amended by SR-NASD-2006-040 eff. July 10, 2006.  
Amended by SR-NASD-2000-23 eff. July 10, 2006.  
Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notices:** 98-33, 05-78, 06-15.

## **6956. Violation of Order Audit Trail System Rules**

Failure of a member or person associated with a member to comply with any of the requirements of Rule 6951 through Rule 6957 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

Adopted by SR-NASD-97-56 eff. according to schedule in Rule 6957.

**Selected Notice:** 98-33.

## **6957. Effective Date**

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

**(a) Clocks**

The requirements of Rule 6953 shall be effective on August 7, 1998, for all computer system clocks and on July 1, 1999, for all mechanical clocks.

**(b) Electronic Orders**

With respect to electronic orders, the requirements of the Order Audit Trail System shall be effective on:

(1) March 1, 1999, for electronic orders received by Electronic Communications Networks and electronic orders received at the trading department of a member that is a market maker in the securities that are the subject of the orders, provided that market makers shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to the market maker and shall not be required to record and report information item (5) specified in Rule 6954(b) and information items (2)(A), (2)(B)(i), (3)(A), (4)(A), and (5)(A) specified in Rule 6954(c) with respect to such orders; and

(2) August 1, 1999, for all electronic orders, at which time all information items specified in Rules 6954(b), (c), and (d) shall be required to be recorded and reported with respect to such orders.

**(c) Manual Orders**

The requirements of the Order Audit Trail System shall be effective on July 10, 2006 for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them. . .

**(d) Rule 3110**

The requirements of Rule 3110(h)(1)(A) and Rule 3110(h)(1)(B) shall be effective on March 1, 1999, and the requirements of Rule 3110(h)(1)(C) shall be effective 120 days after SEC approval of SR-NASD-00-23. The requirements of Rule 3110(h)(2) and Rule 3110(h)(3) shall be effective on March 1, 1999.

Amended by SR-NASD-2006-052 eff. July 10, 2006.  
Amended by SR-NASD-2006-040 eff. July 10, 2006.  
Amended by SR-NASD-2000-23 eff. July 10, 2006.  
Amended by SR-NASD-2006-062 eff. May 15, 2006.  
Amended by SR-NASD-2000-70 eff. Nov. 30, 2000.  
Amended by SR-NASD-2000-53 eff. Aug. 31, 2000.  
Amended by SR-NASD-2000-09 eff. March 9, 2000.

Amended by SR-NASD-98-38.  
Adopted by SR-NASD-97-56.

**Selected Notices:** 98-33, 98-73, 05-78, 06-15, 06-17.

## **7100. Minor Modifications in Charges**

(a) To compensate for minor variations in annual net income, the Board of Directors of The Nasdaq Stock Market, Inc. may increase or decrease the total charges in this Schedule by 10% from the base charges as adopted on August 28, 1979 upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

(b) To facilitate the development of new information services and uses under appropriate terms and conditions, arrangements of limited duration, geography and/or scope may be entered into with Broker/Dealers, Vendors and other persons which may modify or dispense with some or all of the charges contained in this Rule or the terms and conditions contained in standard agreements. The arrangements contemplated will permit the testing and pilot operation of proposed new information services and uses to evaluate their impact on and to develop the technical, cost and market research information necessary to formulate permanent charges, terms and conditions for filing with and approval by the Commission.

Deleted by SR-NASD-2007-018 eff. March 5 2007.  
Amended by SR-NASD-94-48 eff. November 2, 1994.  
Amended by SR-NASD-86-15 eff. June 23, 1986.  
Adopted by SR-NASD-79-2 eff. August 28, 1979.