prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that GSCC's proposed rule change is consistent with this requirement because it clearly sets forth in GSCC's rules its procedures for management's review and possible waiver of fines and should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place. This added efficiency should contribute to the perfection of the national system for clearance and settlement.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–27136 Filed 10–27–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48674; File No. SR–NASD–2003–149]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SuperMontage and ITS Securities

October 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2003 the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

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

Nasdaq is proposing to enhance the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq proposes to trade via SuperMontage all securities that are eligible for trading via the Intermarket Trading System (''ITS Securities''). Under the proposal, NASD members will trade ITS Securities using the SuperMontage functionality that the Commission has previously approved for the trading of Nasdaq-listed securities, with certain modifications needed to ensure that NASD members continue to comply with all pre-existing NASD and Commission rules governing the trading of ITS Securities. Nasdaq will publish a phase-in process for the trading of ITS Securities on the SuperMontage platform after approval by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

4700. Nasdaq National Market Execution System (NNMS)

4701. Definitions

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

(a) The term *active NNMS securities* shall mean those NNMS eligible securities in which at least one NNMS Market Maker or *ITS/CAES Market Maker* is currently active in NNMS.

(b) Reserved

(c) The term *Attributable Quote/Order* shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's [MMID] *MPID* in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For ITS/CAES Market Makers, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MPID once such Quote/Order becomes the participant's best attributable bid or offer.

[(2)]*(3)* For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's [MMID] *MPID* in the Nasdaq Quotation Montage.

(d) The term *Automated Confirmation Transaction* service or *ACT* shall mean

the automated system owned and operated by The Nasdaq Stock Market, Inc., which compares trade information entered by ACT Participants and submits ''locked-in'' trades to clearing.

(e) The term *automatic refresh size* shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.

(f) The term *Directed Order* shall mean an order *in a Nasdaq-listed security* that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the ''Preferred Order'' described in subparagraph (aa) of this rule. *Directed Orders shall not be available for ITS Securities.*

(g) The term *Displayed Quote/Order* shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants or NNMS Order Entry Firms.

(h) The term *Firm Quote Rule* shall mean SEC Rule 11Ac1–1.

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

(j) The term *Liability Order* shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term *limit order* shall mean an order to buy or sell a stock at a specified price or better.

(l) The term *market order* shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term *marketable limit order* shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

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

(o) The term *Non-Attributable Quote/Order* shall mean:

(1) for orders in Nasdaq-listed securities, a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).

(2) for orders in ITS Securities, a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis in the Nasdaq Order Display Facility. NNMS Order Entry Firms shall be eligible to enter Non-Attributable orders in ITS Securities only if they are designated as Immediate or Cancel.

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

(q) The term *Non-Liability Order* shall mean *for Nasdaq listed securities* an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule. *For ITS Securities, only orders preferenced to an ITS exchange can be non-liability orders.*

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

(s) The term *NNMS eligible securities* shall mean designated Nasdaq-listed equity securities *and ITS Securities as that term is defined in NASD Rule 5210(c).*

(t) The term *NNMS ECN* shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities.

(1) The term *NNMS Auto-Ex ECN* shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(2) The term *NNMS Order-Delivery ECN* shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(u) The term *NNMS Market Maker* shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities, and is currently active in NNMS and obligated to execute orders through the automatic-execution functionality of the NNMS system for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(v) The term *NNMS Participant* shall mean an NNMS Market Maker, NNMS ECN, UTP Exchange, [or] *ITS/CAES Market Maker,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

(w) The term *NNMS Order Entry Firm* shall mean a member of the Association who is registered as an Order Entry Firm for purposes of *entering orders in NNMS Securities into NNMS* [participation in NNMS]. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.

(x) The term *Nasdaq Quotation Montage* shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the [MMID] *MPIDs* for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related [MMID] *MPID.*

(y) The term *Nasdaq Quoting Market Participant* shall include only the following: (1) NNMS Market Makers;

[or] (2) NNMS ECNs[.] and *(3) ITS/CAES Market Makers.*

(z) The term *odd-lot order* shall mean an order that is for less than a normal unit of trading.

(aa) The term *Preferenced Order* shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term *Quote/Order* shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm that is displayed in the form of a single quotation. Unless specifically referring to a UTP Exchange's agency Quote/Order (as set out in Rule 4710([f]e)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term *Quoting Market Participant* shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; [and] (3) UTP Exchange Specialists, *and ITS/CAES Market Makers.*

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

(ee) The term *Nasdaq Order Display Facility* shall mean the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's [MMID] *MPID,* the five best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term *UTP Exchange* shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-

Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

(gg) The term *Legacy Quote* shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the NNMS.

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

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

(jj) The term *End-of-Day* shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until market close (4 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party. *End-of-Day orders shall not be available for ITS Securities.*

(kk) The term *Auto Ex* shall mean for orders in *Nasdaq listed securities* so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(ll) The term Fill or Return *shall mean for orders in ITS Securities so designated, an order that is to be delivered to or executed by NNMS Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges.*

[(ll)] (*mm*) The term *Pegged* shall mean, for orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. The price of a Pegged Order may be equal to the inside quote on the same side of the market (a Regular Pegged Order) or may be equal to a specified amount better than the inside

quote on the contra side of the market (a Reverse Pegged Order). The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be converted into an un-pegged limit order. *Pegged Orders shall not be available for ITS Securities.*

(nn) The term *Discretionary* shall men:

(1) for orders *in Nasdaq listed securities* so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price may be fixed, or pegged to the inside quote on the same side of the market (or a specified amount better than the inside quote on the contra side of the market if designated as a short sale order), and the pegging of the discretionary order may be capped in the same manner as a pegged order.

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

(oo) The term *Summary* shall mean, for orders so designated, an order that if marketable upon entry and receipt by NNMS, shall be rejected and returned to the entering party.

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

(qq) The term ITS Exchange *shall mean a national securities exchange that participates in the ITS system as defined in Rule 5210(a). ITS Exchanges shall not be eligible to participate in the NNMS. ITS Commitments sent by ITS Exchanges shall be processed by the system in accordance with the ITS Plan and all applicable NASD rules governing the participation in ITS.*

Quotes/Orders that are eligible for ITS will be processed by the system and delivered to the appropriate ITS Exchange as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable NASD rules.

(rr) The term Sweep Order *shall mean, for orders in ITS Securities so designated, an order that may be delivered to or executed by NNMS Participants at multiple price levels.*

(ss) The term Total Day *shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between market open. and 6:30 p.m., after which it shall be returned to the entering party.*

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

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

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) Execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) Registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker or to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

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

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) Execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

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

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) The execution of an NNMS Participant application agreement with the Association;

(2) Membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities

through which NNMS compared trades may be settled;

(3) Membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) Maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(e) *Participation in NNMS as an ITS/CAES Market Maker shall be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.*

([e]*f*) The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

([f]*g*) Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

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

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

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

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale

exempt, or long sale, and may be designated as ''Immediate or Cancel'', [or as a] ''Day''*, [or a] ''Good-till-Cancelled''*, *''Auto-Ex'', ''Fill or Return'', ''Pegged'', ''Discretionary'', ''Summary'', ''Sweep'', ''Total Day'', ''Total Good till Cancelled'', or ''Total Immediate or Cancel''* [order].

(1) If a priced order designated as ''Immediate or Cancel'' (''IOC'') is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

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

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

(4) Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: *For Nasdaq listed securities only,* Non-Directed Day and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

(5) for *Nasdaq listed securities,* [A]*a*n order may be designated as ''Auto-Ex,'' in which case the order will also automatically be designated as IOC. An Auto-Ex Order will execute solely against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(6) for *ITS Securities, an order may be designated as ''Fill or Return,'' in which case it shall be executed solely against the Quotes/Orders of NNMS*

Participants at the best bid/best offer within NNMS. A Fill or Return order entered by an ITS/CAES Market Maker may trade through the quotation of an ITS Exchange if it is also designated as a Sweep Order.

(7) [In addition, an order may be assigned the designations described below.] If the order is designated as ''Pegged'', the order (or unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market as directed by the entering party. Pegged orders may only be entered as ''Day'' orders. A Pegged Order will be cancelled if there is no displayable Quote/Order to which its price can be pegged. To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders for all securities or for any security. Pegged orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution. *Pegged Orders shall not be available for ITS Securities.*

(8) If the order is designated as ''Discretionary'', the order (or unexecuted portion thereof) shall be displayed in system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. A Discretionary Order may only be entered as a ''Day'' order. *A Discretionary Order in an ITS Security may not be preferenced to an ITS/CAES Market Maker or ITS Exchange, shall not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is also designated as a Sweep Order.*

(9) If the order is designated as ''Summary'', the order, if marketable at the time of entry and receipt by NNMS, shall be rejected and returned to the entering party.

(10) An order in an ITS Security may be designated as a ''Sweep Order.'' A Sweep Order may be delivered to or executed by NNMS Participants at multiple price levels.

(i) A Sweep Order entered by an NNMS Order Entry Firm shall not trade through the quotation of an ITS Exchange. The system shall execute all shares available within the NNMS without trading through the quotation of an ITS Exchange, and shall reject the unexecuted portion of the Sweep Order back to the entering party.

(ii) A Sweep Order entered by an NNMS Quoting Market Participant may

trade through the quotation of an ITS Exchange. The system shall execute only against NNMS Participants.

(11) An order in an ITS Security may be designated as ''Total Day'' (''X'') and may be entered between the hours 7:30 a.m. to 6:30 p.m. Eastern Time. If a priced X order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 6:30 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(12) An order in an ITS Security may be designated as ''Total Good-till-Cancelled'' (''GTX''). If a GTX order (or unexecuted portion thereof) shall be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time.

(13) An order in an ITS Security may be designated as ''Total Immediate or Cancel'' (''IOX''). If a priced order designated as IOX is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. IOX orders may be entered beginning at 7:30 a.m. Eastern Time and are available for potential execution throughout any trading day (9:30 a.m. through 6:30 p.m. Eastern Time).

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350 *or, in the case of ITS Securities, SEC Rule 10a–1.*

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

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

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel *and limit orders designated as Total Immediate or Cancel* orders shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or

potential execution in conformity with Rule 4710(b)(1)(B).

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

(A)*(i)* All Non-Directed orders *in Nasdaq listed securities* shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may also assign the order designations described in subparagraph (a)(1)(B). For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(ii) In ITS Securities, all Non-Directed orders shall be designated as Immediate or Cancel, GTC, Day, Total Immediate or Cancel, Total Day, or Total GTC but shall be required to be entered as Non-attributable if not entered as IOC or IOX. NNMS Order Entry Firms may also assign the order designations described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

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

(b) Directed Orders *in Nasdaq-listed Securities.* A participant may enter a Directed Order i*n a Nasdaq-listed security* into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) An ''All-or-None'' order (''AON'') that is at least one normal unit of

trading (*e.g.* 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) A ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(C) A Directed Order that is entered at a price that is inferior to the Attributable Quote/Order of the Quoting Market Participant to which the order is directed.

Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 3 to 99 minutes, or may be designated as ''Day'' order, or an ''End of Day'' order.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(4) A Directed Order entered into the system may not be cancelled until a minimum of five seconds has elapsed after the time of entry. This five-second time period shall be measured by NNMS.

(5) Directed Orders shall not be entered in ITS Securities.

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—

(1) In Nasdaq-listed securities, [A]any order in whole shares up to 999,999 shares may be entered into the NNMS for normal execution processing.

(2) Orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. Orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

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

4707. Entry and Display of Quotes/Orders

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

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

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

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display Quotes/Orders submitted to the system as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID,* and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders— The price and size of a Nasdaq Quoting Market Participant's and NNMS Order Entry Firm's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. A Non-Attributable Quote/Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID.* Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous [MMID] *MPID,* which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market.

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

(A) Odd-lots, Mixed Lots, and Rounding—The]Nasdaq system] *NNMS* (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, [Nasdaq] *NNMS* will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant and NNMS Order Entry Firm at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quote/Order that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get

displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(B) Aggregation and Display of Odd-lots Bettering the Inside Price—*Except as provided in Subsection (C) below,* odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE [MMID] *MPID*, with the odd-lot share amounts of other NNMS Quoting Market Participants and NNMS Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if 1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and 2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to be processed by the system based on the time-priority of their original entry.

(C) In the case of ITS Securities, odd lot share amounts of each individual ITS/CAES Market Maker shall be aggregated separately and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. Odd lot share amounts will be cancelled at the end of the day.

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

(d) Summary Scan—The ''Summary Scan'' functionality, [which] is a query-only non-dynamic functionality *for Nasdaq listed securities only.* It [that] displays without attribution to Quoting Market Participants' [MMIDs] *MPIDs* the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the number of price levels authorized for aggregation and display pursuant to Rule 4701 (ee).

(e) NQDS Prime—''NQDS Prime'' is a separate data feed *for Nasdaq-listed securities* that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' [MMIDs] *MPIDs* all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

(f) IM Prime—''IM Prime'' is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility for ITS Securities

4708. ITS Commitments

(a) Compliance with Rule 5200 Series.
(1) Pre Opening Application. ITS/CAES Market Makers may use NNMS to participate in the Pre Opening Application accordance with Rules 5240 and 5250. NNMS Order Entry Firms may not participate in the Pre Opening Application.

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

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use NNMS to comply with the locked and crossed markets obligations set forth in Rules 5263. Any order or portion thereof entered by an NNMS Order Entry Firm that would create a locked/crossed market with an ITS Exchange will be rejected.

(b) Inbound ITS Commitments
(1) If the ITS Commitment contains an obvious error as described in Rule 5265(b), the NNMS will decline it.

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

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

4710. Participant Obligations in NNMS

(a) Registration Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, *ITS/CAES Market Maker* or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders.
(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the NNMS. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size. ITS/CAES Market Makers that elect order delivery shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's Displayed Quote/Order and Reserve Size. ITS/CAES Market Maker that elect order delivery shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ITS/CAES Market Maker's system, in which case

the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

[[ii]] *(iii)* NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

[[iii]] *(iv)* UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

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

a. Displayed Quotes/Orders of NNMS Market Makers, *ITS/CAES Market Makers,* and NNMS ECNs, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, and displayed non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants' Quotes/Orders;

b. Reserve Size of Nasdaq Quoting Market Participants and NNMS Order Entry Firms, in time priority between such participants' Quotes/Orders; and

c. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

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

a. If a Nasdaq Quoting Market Participant or NNMS Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and NNMS Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Nasdaq Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/ order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/ order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/ orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order, in price/time priority.

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

c. If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: (1) delivering an execution to a Quoting Market Participant(s) or an NNMS Order Entry Firm that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or (2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00 − ($10.00 × .10 *e.g.* $1) − $.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 *e.g.* $1) + $.01 = $11.01. *This subsection shall not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.*

(d) An Auto-Ex order *in a Nasdaq listed security* will execute solely

against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.

(e) A Fill or Return order in an ITS Security will be executed solely by the NNMS at the best bid/best offer, without delivering the order to an ITS Exchange. A Fill or Return order entered by an ITS/ CAES Market Maker may trade through the quotation of an ITS Exchange if it is also designated as a Sweep Order.

([e]*f*) If an NNMS Market Participant enters a Discretionary Order, the order shall be first executed against (or delivered in an amount equal to) the Displayed Quote/Order and Reserve Size of available market participants in conformity with this rule based on the algorithm selected and the displayed price of the Discretionary Order, subject to the foregoing exceptions. In the event that the full size of the incoming order cannot be executed at the displayed price, the order may also be executed against (or delivered in an amount equal to) the Displayed Quote/Order and Reserve Size of market participants with Quotes/Orders within the discretionary price range (including discretionary orders on the contra side), in conformity with this Rule based on the algorithm selected (subject to any applicable exception). The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b). When a Discretionary Order is displayed as a Quote/Order, it will be available for execution against (or delivery to) market participants entering orders or Quotes/ Orders at the display price (including market orders, when the display price is at the inside, and other discretionary orders), and will then be available for execution against (but not delivery to) market participants entering orders or Quotes/Orders at prices within the discretionary price range (including other discretionary orders), at the price of the incoming order.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/ Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(v) ITS/CAES Market Makers
a. If an ITS/CAES Market Maker declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/ Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond in any manner within 5 seconds of order

delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

b. If the bid side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish a bid of $0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish an offer of two times the system best bid plus $0.01 and offer for 100 shares.

c. If an ITS/CAES Market Maker regularly fails to meet a 5-second response time (as measured by the ITS/ CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/ CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market

(D) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality.

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

4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh ("AQR")—Once an NNMS Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to an amount less than a normal unit of trading, by a price interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size.

(iii) This functionality shall produce an Attributable Quote/Order.

(iv) The AQR functionality described in this subparagraph shall only be available for use in connection with a NNMS Market Maker's "Legacy Quote." This functionality shall be available only to NNMS Market Makers.

(v) The AQR functionality shall not be available to any participant for any ITS Security.

(3) Entry of Locking/Crossing Quotes/Orders The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e) *or in NASD Rule 5263(a) or (b)),* the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

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

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants or NNMS Order Entry Firms in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed. Once the lock/cross is cleared, if the participant's order is not completely filled, the system *may* [will]*, if consistent with the parameters of the Quote/Order,* reformat the order and display it in Nasdaq [[consistent with the parameters of the Quote/Order]] as a Quote/Order on behalf of the entering Quoting Market Participant or Order Entry Firm. *If an order is not eligible to be reformatted, the NNMS will reject the remainder of the order back to the entering participant.*

(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market *in a Nasdaq-listed security* is locked or crossed at 9:29:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once NNMS has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters: If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)([iv]*ii*)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they

voluntarily select a "Y" AIQ Value as provided for in Rule 4710 (b)(1)(B)([iv]*ii*)(a).

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

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters: If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other ITS/CAES Market Maker or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710 (b) (1)(B)(ii)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).

(4) An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

(5) If an NNMS Market Maker's Attributable Quote/Order is reduced to less than a round-lot amount on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS on that side of the market, and the NNMS Market Maker will be permitted a grace

period of 30 seconds within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the AQR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have the exhausted side of its quotation restored by the system at a price $0.01 inferior to the lowest displayed bid price or the highest displayed offer price in that security as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: (a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, NNMS will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days.

(6) Notwithstanding the provisions of subparagraph (5) above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 *or an ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 6350* prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) an NNMS Market Maker *or ITS/CAES Market Maker* that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations

will be considered voluntary and unexcused.

(7) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph (b)(5) of this rule.

(8) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with NNMS inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS and a closed-quote status, and if the Quoting Market Participants is an NNMS Market Maker an excused withdrawal from Nasdaq pursuant to Rule 4619 *or an ITS/CAES Market Maker an excused withdrawal pursuant to Rule 6350.* If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

(c) Directed Order Processing—A participant may enter a Directed Order in *Nasdaq-listed securities* into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferred Orders.

(d) NNMS Order Entry Firms. All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide and these rules. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if

requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

(e) UTP Exchanges. Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes A UTP Exchange may voluntarily participate in the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (f) of this rule. 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 the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS.

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq.

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP

Exchange's best bid/best offer Quote/ Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee).

(B) UTP Exchange Agency Quotes/ Orders.

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing— UTP Exchanges that elect to participate in the system shall be required to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711. Clearance and Settlement

All transactions executed in NNMS shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

4712. Obligation To Honor System Trades

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

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

4713. Compliance With Rules and Registration Requirements

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

(b)(1) If an NNMS Participant fails to maintain a clearing relationship as required under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705, it shall be removed from NNMS until such time as a clearing arrangement is reestablished.

(2) An NNMS Participant that is not in compliance with its obligations under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705 shall be notified when Nasdaq exercises it authority under paragraph (b)(1) of Rule 4713.

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

4715. Adjustment of Open Quotes and/ or Orders

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

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

(b) Sell Orders—Sell side orders *in Nasdaq-listed and NYSE-listed securities* shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall

be purged from the system. *Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.*

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

(1) *Odd lot orders in ITS Securities that result from partial execution rather than order entry shall be canceled rather than adjusted.*

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

[(2)] *(3)* Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.

[(3)] *(4)* Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

[(4)] *(5)* Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/ or (3) above.

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

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

4719. Anonymity

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

(b)(1) The processing described in paragraph (a) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.

(2) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs ECN shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.

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

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

(2) For regulatory purposes or to comply with an order of an arbitrator or court; or

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

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

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5200. Intermarket Trading System/Computer Assisted Execution System

5210. Definitions

(a)–(h) No Change.

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

5220. ITS/CAES Registration

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

(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/CAES Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) participation in NNMS in accordance with the Rule 4700 and 5200 Series;

([c]*d*) compliance with SEC Rule 15c3–1;

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

([e]*f*) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association;

([f]*g*) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and

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

5221. Suspension or Revocation of ITS/CAES Registration

No Change.

5230. ITS Operations

No Change.

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

No Change.

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

No Change.

5260. System Trade and Quotations

5261. Obligation to Honor System Trades

No Change.

5262. Trade-Throughs

No Change.

5263. Locked or Crossed Markets

No Change.

5264. Block Transactions

No Change.

5265. Authority To Cancel or Adjust Transactions

No Change.

6300. Consolidated Quotations Service (CQS)

No Change.

6400. Reporting Transactions in Listed Securities

No Change.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NASD members currently use CAES to trade ITS Securities with other NASD members and also with the securities exchanges that participate in ITS. Nasdaq has decided to enhance the trading of ITS Securities by offering the superior functionality of SuperMontage, Nasdaq's fully integrated order display and execution system currently used for trading Nasdaq securities. SuperMontage allows market participants to enter unlimited quotes and orders at multiple price levels. The system displays aggregate interest five price levels deep on each side of the market and permits users to access that aggregated trading interest via a variety of order types. In addition, SuperMontage offers pre- and post-trade anonymity.

Trading of ITS Securities is affected by three national market system plans that are established jointly by the markets and approved by the Commission. Nasdaq collects quotations and trade reports from NASD members and provides such quotations to the Consolidated Quotation System ("CQ Plan") and the Consolidated Tape Association ("CT Plan") for dissemination to the public. The ITS Plan governs the manner in which

NASD members participate in the ITS, an electronic linkage between markets that trade exchange listed securities. In addition, the NASD adopted the NASD Rule 5200 and 6300 Series to ensure that NASD members comply with the obligations imposed by the CT, CQ, and ITS Plans.

Nasdaq proposes no changes to the obligations imposed by the Plans or by the NASD Rule 5200 and 6300 Series. Thus, for example, members must continue to comply with the trade through restrictions in NASD Rule 5262, the locked and crossed markets restrictions in NASD Rule 5263, the block trade requirements in NASD Rule 5264, and the Pre-Opening Application procedures set forth in NASD Rules 5240 and 5250. Members that wish to make markets in ITS Securities must continue to register as ITS/CAES and CQS Market Makers pursuant to NASD Rules 5220 and NASD Rule 6320 and comply with the obligations imposed under NASD Rule 6330.[3] They must also continue to clear and settle trades under NASD Rule 5261 and properly report transactions pursuant to the NASD Rule 6400 Series.

To ensure that SuperMontage will enable NASD members trading ITS Securities to continue to comply with applicable NASD and Commission rules, Nasdaq is proposing certain modifications to the existing SuperMontage functionality. These modifications apply to ITS Securities only; they do not affect the trading of Nasdaq-listed securities:

1. Define two participant types: ITS/CAES market makers and order entry firms.

2. Enable ITS/CAES market makers to participate in the Pre-Opening Application in accordance with NASD Rules 5240 and 5250.

3. Enable ITS/CAES market makers to comply with the locked/crossed obligations imposed by NASD Rule 5263.

4. Enable ITS/CAES market makers to comply with the trade through and block trade obligations imposed by NASD Rules 5262 and 5264.

5. Disable Directed, Pegged and End of Day Orders, modify the Discretionary Order, and add four order types to facilitate ITS trading.

6. Remove the Auto-Quote Refresh functionality, modify the decrementation process, and apply the excused withdrawal provisions of NASD Rule 6350, rather than NASD Rule 4619.

7. Prohibit SuperMontage from executing trades in violation of Rule 10a–1 of the Act[4] or of the obvious error provisions of the ITS Plan.

8. Modify the system to comply with the round lot requirements of the ITS Plan.

9. Modify the adjustment of open buy and sell orders in ITS Securities to conform closely to the practice of the listing exchange.

Set forth below is a description of the proposed modifications.

1. Define Participant Types

NASD members will trade ITS Securities in two ways: as ITS/CAES Market Makers or as NNMS Order Entry Firms.[5] Proposed NASD Rule 4701(pp) defines ITS/CAES Market Makers by incorporating the definition already contained in NASD Rule 5210(e), which includes both market makers and electronic communications networks ("ECNs"). The definition distinguishes ITS/CAES Market Makers, which make markets in ITS Securities from NNMS Market Makers, which make markets in Nasdaq securities.[6] ITS/CAES Market Makers will be permitted to choose between the automatic execution and the order delivery functionality of the NNMS system, unlike NNMS Market Makers, which are required to accept automatic executions. Nasdaq believes that this will permit ITS/CAES Market Makers to better manage their interaction with ITS Exchanges either through the NNMS or through their direct connections to those exchanges' systems.

NASD members may also trade ITS Securities through the NNMS as Order Entry Firms, using the same registration process as NNMS Order Entry Firms in Nasdaq securities. Nasdaq is proposing simply to modify the existing definition of NNMS Order Entry Firm, contained in NASD Rule 4710(w), to include both Nasdaq and ITS Securities. Therefore, references to NNMS Order Entry Firms throughout the 4700 Series should be understood to include Order Entry

Firms participating in either Nasdaq or ITS Securities unless otherwise indicated.[7]

Nasdaq's proposal is dominated by one simple difference between NASD members that trade ITS Securities as ITS/CAES Market Makers and those that trade as NNMS Order Entry Firms: ITS/CAES Market Makers can participate in ITS and NNMS Order Entry Firms cannot. Nasdaq has systematically eliminated any possibility that order entry firms would interact with ITS, by eliminating order entry firms' ability to place liquidity on the SuperMontage book,[8] to precluding their participation in the Pre-Opening Application, to preventing order entry firms from trading through or locking/crossing the quotations of ITS Exchanges. As a result of Nasdaq's tailoring, Nasdaq is proposing no changes to the NASD rules that implement the ITS Plan, and ITS Exchanges will experience no impact from Nasdaq's decision to replace CAES with SuperMontage.

2. Pre-Opening Application

The NNMS would be modified to permit ITS/CAES Market Makers to participate in the Pre-Opening Application for ITS Securities that is established in the ITS Plan and incorporated in NASD Rules 5240 and 5250. The NNMS system will receive all Pre-Opening Administrative ("POA") Messages, Second Look Messages ("SLM"), and One-Sided Responses ("OSRs") that the ITS Exchanges issue. The NNMS will also disseminate those messages to ITS/CAES Market Makers. Market makers that opt to participate in the Pre-Opening Application may do so by entering Pre-Opening Responses

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[3] The NASD Rules will continue to refer to CAES and to ITS/CAES Market Makers in order to maintain consistency with the language of the ITS Plan. To accomplish the name change from CAES to NNMS, Proposed NASD Rule 5210(i) incorporates the ITS Plan definition of CAES and then provides that CAES functionality will now be provided by SuperMontage. In addition, Proposed NASD Rule 5220(c) requires ITS/CAES Market Makers to participate in the NNMS.

[4] 17 CFR 240.10a–1.

[5] NASD Rule 4710(qq) defines ITS Exchanges as national securities exchanges that participates in the ITS system as defined in NASD Rule 5210(a). ITS Exchanges are not eligible to participate in the NNMS but are defined because the system will send ITS Commitments to and receive them from ITS Exchanges.

[6] Nasdaq reinforces this distinction by modifying the definition of NNMS Market Maker. *See* Proposed NASD Rule 4710(u).

[7] The definitions of ITS/CAES Market Makers and NNMS Order Entry Firms are carried forward into other definitions that establish system entitlements. For example, ITS/CAES Market Makers are included in the definitions of NNMS Participants (NASD Rule 4710(v)), Nasdaq Quoting Market Participants (NASD Rule 4710(y)), and Quoting Market Participant (NASD Rule 4710(cc)). Since ECNs may trade ITS Securities only as ITS/CAES Market Makers or as NNMS Order Entry Firms, they are excluded from the definition of NNMS ECNs (NASD Rule 4710(t)).

[8] *See* Proposed NASD Rule 4701(*o*) ("NNMS Order Entry Firms shall be eligible to enter Non-Attributable orders in ITS Securities only if they are designated as Immediate or Cancel"). The ability to enter Non-Attributable Orders in Nasdaq listed securities for display would enable order entry firms to place liquidity in the Nasdaq book under the anonymous acronym "SIZE" and to gain standing in the execution algorithm. Nasdaq is eliminating this feature in order to fully comply with the ITS Plan, although Nasdaq believes that this functionality is consistent with the Exchange Act and is beneficial to investors and market participants alike. As a further result, NNMS Order Entry Firms will not have quotations disseminated via the proposed IM Prime Data Feed. *See* Proposed NASD Rule 4707(f).

(''PORs'') in response to a POA or SLM. In addition, NNMS will receive and process OSRs from the opening ITS Exchange in accordance with NASD Rules 5240 and 5250. NNMS Order Entry Firms are not eligible to participate in the Pre-Opening Application, and the system will not accept PORs that are entered by an Order Entry Firm.

3. Locked and Crossed Markets Processing

The NNMS would process locked or crossed markets between and among ITS/CAES Market Makers largely as it does for Nasdaq securities. A quote/ order that would create a locked or crossed market, if entered into the NNMS during normal market hours, will be processed exactly as locks and crosses in Nasdaq securities are processed under existing NASD Rule 4710(b)(3)(A). Rather than display the quote/order at the locking/crossing price, the system will treat the quote/ order as a marketable limit order and enter it into the system as a Non-Directed Order. A locking quote/order will be executed at the locking price against the order next in line for execution, and a crossing quote/order will be executed at the displayed price of the order next in line for execution. Once the lock or cross is cleared, any remaining shares will be displayed in the NNMS, if eligible for display.

A quote/order that would create a locked or crossed market between and among ITS/CAES Market Makers prior to normal market hours will be processed exactly as are Nasdaq securities today, except that the NNMS automated unlocking/uncrossing spin will occur at 9:29:55 a.m. for ITS Securities rather than at 9:29:30 a.m. as it does for Nasdaq listed securities.[9] Quotes/Orders that would create a locked/crossed market after the unlocking/uncrossing spin occurs will be held in queue until 9:30 a.m. Due to the cumbersome structure of the Pre-Opening Application of the ITS Plan, fewer NASD members participate in the pre-market for ITS Securities than for Nasdaq securities. Therefore, a shorter processing window is appropriate.

Nasdaq would program the NNMS to accommodate different processing for locked or crossed markets involving ITS Exchanges. First, if an Order Entry Firm enters an order that would lock or cross an ITS Exchange, the NNMS will execute the order against all Quotes/ Orders currently in the system and reject any remaining portion of the order that would create a locked/crossed

market with an ITS Exchange. If an ITS/ CAES Market Maker enters a quote/ order that would lock or cross an ITS Exchange, the system will process the quote/order in accordance with its designation and automatically generate and send an ITS Commitment to any ITS Exchange that is locked or crossed.[10]

If an ITS Exchange has created a locked/crossed market with Nasdaq, the NNMS will notify any ITS/CAES Market Maker whose market was locked/ crossed. If Nasdaq receives an ITS Commitment when a locked/crossed condition is pending, Nasdaq will send the ITS Commitment to the ITS/CAES Market Maker(s) at the pending inside price.

4. ITS Trade Through Rule

Nasdaq would modify the NNMS processing to enable ITS/CAES Market Makers to comply with their trade through obligations under NASD Rules 5262 and 5264. The NNMS would reject any order of an NNMS Order Entry Firm that, if executed, would trade through an ITS Exchange. If Nasdaq receives an administrative complaint from an ITS Exchange in response to a potential trade through, Nasdaq will send that complaint to the ITS/CAES Market Maker responsible for the potential trade through, as it does today.[11] ITS/ CAES Market Makers will respond to administrative complaints by entering into the NNMS a preferenced order to the complaining ITS Participant. The NNMS will then generate and send a properly formatted ITS Commitment to the appropriate ITS Exchange.

The NNMS would also monitor for trade-throughs by ITS Exchanges as called for by the ITS Plan and NASD Rules 5262 and 5264. If the system detects a trade through by an ITS Exchange, it will notify the ITS/CAES Market Makers that was traded through.[12] ITS/CAES Market Makers may elect to send administrative complaints on their own behalf. If an inbound ITS Commitment is received, the NNMS will automatically send a preferenced Order at the price of the ITS

Commitment to the Nasdaq Quoting Market Participant(s) at that price level, as Nasdaq does today.[13]

5. Modify Available Order Types

Nasdaq is proposing to disable Directed, Pegged and End of Day Orders, modify Discretionary Orders, and add new order types to accommodate the characteristics unique to ITS Securities. Nasdaq, in consultation with current ITS participants, has determined not to offer Directed, Pegged and End of Day Orders for ITS Securities.[14] The processing of orders in ITS Securities is more complex than for Nasdaq securities due to both the presence of ITS and the ability for ITS/CAES Market Makers to accept order delivery rather than automatic executions. The possibility of receiving Directed Orders, in addition to Non-Directed and Preferenced Orders and ITS Commitments, seems needlessly complicated. Nasdaq decided not to offer Pegged Orders at this time to hasten its development efforts, and it may file a separate proposal to add that functionality at a later date.

Nasdaq is proposing to modify the characteristics of a Discretionary Order for ITS Securities.[15] Like the current Discretionary Order for Nasdaq Securities, it will have both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. Rather than being fixed or pegged to the Nasdaq best bid and offer, the modified order type must be fixed. Nasdaq will systematically prohibit Discretionary Orders in ITS Securities from creating a quote that locks or crosses the national best bid and offer and from executing at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.

Nasdaq is also proposing to create a Fill or Return Order for ITS Securities.[16] Fill or Return Orders will be delivered to or executed by NNMS Participants in ITS Securities through multiple price levels without delivering the order to an ITS Exchange. Unlike the Auto-Ex Order for Nasdaq securities, the Fill or Return Order will execute against ECNs that are

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[9] *See* Proposed NASD Rule 4710(b)(3)(c).

[10] *See* Proposed NASD Rule 4708(a)(3).

[11] *See* Proposed NASD Rule 4708(a)(2).

[12] Due to technology latencies, rapid quote updates, and a variety of other factors, not all apparent trade throughs violate the ITS Plan. To avoid needless false positives, Nasdaq will program the system, as CAES is programmed today, to provide a trade through ''grace period'' before issuing an administrative complaint. The system will not detect a trade through unless a particular Nasdaq quote has been in place for the duration of the grace period. The current grace period ranges between five and 17 seconds, depending upon, among others, the level of automation at a particular exchange.

[13] The ITS Operating Committee has discussed a proposal to add a resolution indicator to ITS Commitments that are intended to respond to an administrative complaint. Nasdaq strongly favors that proposal because it will decrease the difficulty and expense of determining the proper recipient of an inbound ITS Commitment. Nasdaq urges the ITS Operating Committee and the Commission to move quickly to implement that proposal.

[14] *See* Proposed NASD Rule 4710(f), (jj), and (mm).

[15] *See* Proposed NASD Rule 4710(nn)(2).

[16] *See* Proposed NASD Rule 4710(ll).

registered as ITS/CAES Market Makers, but it will not generate an ITS Commitment to an ITS Exchange. In addition, ITS/CAES Market Makers will use this order without trading through the quotations of ITS Exchanges.

An ITS/CAES Market Maker that wishes to trade through multiple price levels and to avoid generating an ITS Commitment, but is willing to trade through those ITS Exchanges, can use the newly proposed ''Sweep Order.'' [17] Nasdaq believes it is consistent with the ITS Plan to offer ITS/CAES Market Makers this functionality because there are many circumstances where an ITS/CAES Market Maker is permitted to trade through an ITS Exchange quotation without violating the ITS Plan. ITS/CAES Market Makers must decide for themselves when the use of such functionality is permitted by the rules, and they will be subject to continuous, rigorous surveillance to ensure proper compliance. On the other hand, Nasdaq will systematically prevent an Order Entry Firm from using the system to trade through the quotations of ITS Exchanges. If an Order Entry Firm enters a Sweep Order, the system will execute all shares available within the NNMS without trading through the quotation of an ITS Exchange, and will reject the unexecuted portion of the Sweep Order to be sent back to the entering party.

Finally, Nasdaq proposes to create three new order types that will participate in after hours trading of ITS Securities between 4:00 and 6:30 p.m. These orders—the ''Total Day'', Total Good-till-Canceled'', and ''Total Immediate or Cancel''—differ from the existing Day, Good till Canceled, and Immediate or Cancel orders only in their ability to participate in the pre-opening spin and after-hours sessions.[18] A Total Day Order, if not fully executed at entry, remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., after which it is returned to the entering party. A Total Good-till-Cancelled Order, if not fully executed at entry remains available for display between 7:30 a.m. and 6:30 p.m. and for execution between 9:29:55 a.m. and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first. A Total Immediate or Cancel Order is a limit order that, upon becoming non-marketable, is canceled and returned to the entering participant. Such orders are

available for potential execution between 9:29:55 a.m. and 6:30 p.m.

6. Quotation Updates

The manner in which ITS/CAES Market Makers update their quotations would differ in certain respects from NNMS Market Makers. First, if the bid side of an ITS/CAES Market Maker's quote/order is exhausted, the system then will automatically establish a bid of $0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's quote/order is exhausted, the system will then automatically establish an offer of two times the system best bid plus $0.01 and offer for 100 shares.[19] This modification will ensure that ITS/CAES Market Makers maintain continuous two-sided quotations whenever they are active in the NNMS.

To preserve a fair and orderly market, Nasdaq would close the quotation of any ITS/CAES Market Maker that regularly exceeds the standard five-second response time. Specifically, if an ITS/CAES Market Maker regularly fails to meet a five-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the five-second response time requirement with regularity sufficient to maintain a fair and orderly market.[20]

The Auto-Quote Refresh (''AQR'') functionality described in NASD Rule 4710(b)(2)(B) is designed to assist market participants in maintaining a continuous two-sided quotation. Because the system will automatically enter a quotation for an ITS/CAES Market Maker whose quotation has been decremented to zero, Nasdaq does not believe it is necessary to provide ITS/CAES Market Makers with that AQR functionality.[21] Likewise, an ITS/CAES Market Maker that experience difficulty maintaining proper quotations may request an excused withdrawal pursuant to NASD Rule 6350, rather than utilizing the procedures set forth in NASD Rule 4619 for Nasdaq securities.[22]

7. System Validations

Nasdaq would program SuperMontage to validate ITS Commitments to ensure that they comply with the formatting

requirements set forth in NASD Rule 5230. In addition, the system will screen ITS Commitments and reject any ITS Commitment that, if executed, would violate Rule 10a–1 of the Act [23] governing the execution of short sale orders or that would constitute an obvious error as set forth in NASD Rule 5265.[24]

8. Odd-Lot Processing

Nasdaq is proposing to modify two aspects of the odd-lot processing of ITS Securities. This is necessary to accommodate the ITS Plan requirement that ITS Commitments be for a minimum of one round lot or for round lot multiples. This requirement is incorporated in Proposed NASD Rule 4706(d)(2), which requires that orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. This proposed rule also establishes that orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

In addition, Nasdaq proposes to modify the aggregation of odd lots set forth in NASD Rule 4707. Specifically, in the case of ITS Securities, odd lot share amounts of each individual NNMS Participant will be aggregated separately and shall be displayed next to that NNMS Participant's MPID for a minimum of one round lot or for round lot multiples. Odd lot share amounts will be cancelled at the end of the day.[25] Nasdaq is modifying the processing of Nasdaq securities, which permits the aggregation of all market participants' orders together, to ensure that all ITS Commitments are for a minimum of one round lot.

9. Adjustment of Open Orders

Nasdaq is proposing to modify the adjustment of open buy and sell orders to more closely conform that process to the practice of the listing exchange. Sell orders in Nasdaq-listed and NYSE-listed securities will not be adjusted by the system, except for reverse splits where sell orders will be purged from the system. In the event of a Stock Dividend or Stock Split, sell orders in Amex-listed securities will be adjusted differently, in accordance with the procedures set forth for buy orders. In such cases, sell orders, like buy orders in all securities, prices will be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount will then be subtracted from the

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[17] *See* Proposed NASD Rule 4710(pp).
[18] *See* Proposed NASD Rule 4710(ss ''uu).

[19] *See* Proposed NASD Rule 4710(b)(1)(C)(v)(b).
[20] *See* Proposed NASD Rule 4710(b)(i)(c)(v)(c).
[21] *See* Proposed NASD Rule 4710(b)(3)(B)(v).
[22] *See* Proposed NASD Rule 4710(b)(6).

[23] 17 CFR 240.10a–1.
[24] *See* Proposed NASD Rule 4708(b)(1–2).
[25] *See* Proposed NASD Rule 4708(b)(3)(C).

price of the buy order. Unless marked ''Do Not Increase'', the size of the order will be increased by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.[26] Finally, odd lot orders in ITS Securities that result from partial execution rather than order entry will be canceled rather than adjusted.

Implementation

When the proposed enhancements to SuperMontage are approved, Nasdaq proposes to set and publish a phase-in schedule for transitioning from CAES to SuperMontage. When an ITS Security begins trading through SuperMontage, it will simultaneously cease trading through CAES. When all ITS Securities are trading through SuperMontage, no stocks will be trading through CAES and CAES will be retired.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[27] which requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the rules cannot be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Nasdaq believes that improvements to SuperMontage are designed to increase the liquidity and opportunities for price improvement in SuperMontage by facilitating greater participation and trading interest interaction.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

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

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–149 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–27089 Filed 10–27–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48677; File No. SR–NASD–2003–155]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Accelerated Return Notes Linked to the S&P 500® Index

October 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

Nasdaq proposes to list and trade Accelerated Return Notes Linked to the S&P 500® Index (''Notes'') issued by Merrill Lynch & Co., Inc. (''Merrill Lynch'').

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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[26] *See* Proposed NASD Rule 4715(b and c).
[27] 15 U.S.C. 70o–3(b)(6).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.