(''Security'') from listing and registration on the Pacific Exchange, Inc. (''PCX'').

In its filing with the Commission, the Company cited the following factors in making the determination to withdraw its Security from listing and registration on the PCX:

The Security is currently listed and registered on both the PCX and the New York Stock Exchange, Inc. (''NYSE''). The Company believes that no advantage exists in maintaining listings for the Security on both exchanges and that the continuation of such dual listing might result in fragmentation of the marketplace for the Security. Finally, the Company notes that trading volume in its Security on the PCX has been very low, making the continuing costs associated with the maintenance of such listing unjustifiable.

The Company has stated that it has complied with the rules of the PCX governing the withdrawal of its Security, and that the PCX has in turn indicated that it does not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and shall have no effect upon the Security's continued listing and registration on the NYSE. By reason of section 12(b) of the Act [3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under section 13 of the Act.[4]

Any interested person may, on or before August 29, 2000, submit by letter to the Secretary of the Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–20635 Filed 8–14–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43133; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 5, 6, and 7 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of the Nasdaq Trading Platform

August 10, 2000.

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 the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') Amendment Nos. 5, 6, and 7 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 16, 2000, Nasdaq filed Amendment No. 5 to the proposal.[3] On July 6, 2000, Nasdaq filed Amendment No. 6 to the proposal.[4] On August 7, 2000, Nasdaq filed Amendment No. 7 to the proposal.[5] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[6] On March 16, 2000, Nasdaq filed Amendment No. 3 to the proposal.[7] On March 30, 2000 Amendment No. 4 was published for comment in the **Federal Register**.[8] The Commission is publishing this notice to solicit comments on Amendment Nos. 5, 6, and 7 to the proposed rule change from interested persons.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission (May 16, 2000) (''Amendment No. 5'').

[4] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission (July 6, 2000) (''Amendment No. 6'').

[5] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission (August 7, 2000) (''Amendment No. 7'').

[6] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

[7] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), Commission (March 15, 2000) (''Amendment No. 3''). In Amendment No. 3, the NASD responded to comment letters and submitted substantive, clarifying, and technical amendments to the proposal.

[8] *See* Securities Exchange Act Release No. 42573 (March 23, 2000), 65 FR 16981.

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

Nasdaq and the NASD propose the following amendments in response to comment letters submitted to the Commission regarding the proposal as originally noticed. The amended rule language is as follows: [10]

Proposed additions are *italicized* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq [National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

(g) No Change

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain *a* two-sided quotation[s] *(''Principal Quote''), which is attributed to the market maker by a special maker participant identifier (''MMID'') and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market]

[9] This 19b–4 filing, representing Amendment Nos. 5, 6, and 7 to SR–NASD–99–53, reflect the substantive amendments to the filing, and contains some technical changes and clarifying information to the proposal.

[10] The amended rule language contained in this notice reflects the Commission's approval of SR–NASD–99–11, regarding the establishment of the Nasdaq National Market System (''NNMS''). *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (Order for File No. SR–NASD–99–11 functionally integrating the Small Order Execution System (''SOES'') and SelectNet system to become the foundation of the NNMS.) In addition, the amended rule language replaces, in the entirety, the rule language contained in the original filing, as well as Amendment Nos. 1, 2, 3 and 4.

at all times, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed in The Nasdaq Stock Market] must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a ''normal unit of trading'' shall be 100 shares.*

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq['s] National Market Execution System.

(d) No Change

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System (''NNMS'')[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported.

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet Service] *or facilities of the facilities of the Nasdaq National Market Execution System (''NNMS'')*.

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. Nasdaq National Market Execution System (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning.*

[(d)] (*a*) The term ''active NNMS securities'' shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] (*b*) The term ''Agency Quote'' shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(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 in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) 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 in the Nasdaq Quotation Montage.

[(h)] (*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.

[(g)] (*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 [maximum order] automatic refresh size default [size] *amount* shall be 1,000 shares.

(f) The term ''Directed Order'' shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant.

(g) The term ''Displayed quote/Order'' shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

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

(i) 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.

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

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

(l) The term ''marketable limit order'' shall mean a limit order that, at the time

it is entered into the NNMS, if it is a limit order to buy, is priced at the current inside offer or higher, or if it is a limit order to sell, is priced at the inside bid or lower.

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

(n) The term ''Non-Attributable Quote/Order'' shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(o) 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 Participants.

(p) The term ''Non-Liability Order'' shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(q)* The term ''Nasdaq National Market Execution System,'' [or] ''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 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.

[(c)] *(r)* The term ''NNMS eligible securities'' shall mean designated Nasdaq-*listed* [National Market (NNMS)] equity securities.

(s) The term ''NNMS ECN'' shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participants in the NNMS with respect to one or more 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 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 NNMS security at the Nasdaq inside bid and/or offer price.

[(e)] *(t)* 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 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 NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

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

[(f)] *(v)* The term ''NNMS Order Entry Firm'' shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(w) The term ''Nasdaq Quotation Montage'' shall mean the portion of 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 MMIDs 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.

(x) The term ''Nasdaq Quoting Market Participant'' shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

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

(z) 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 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)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or best offer quotation transmitted to Nasdaq by the UTP Exchange.

(aa) The term ''Quoting Market Participant'' shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(bb) The term ''Reserve Size'' shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant 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 executed.

(cc) The term ''Nasdaq Order Display Facility'' shall mean the portion of Nasdaq Workstation presentation that displays without attribution to particular Quoting Market Participant's MMID the three 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.

(dd) The term ''UTP Exchange'' shall mean any registered national securities exchange 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'').

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 clearing agency registered with the Commission which 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 to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptable 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 NNM*S* 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 clearing agency registered with the Commission which 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 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) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(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.

[(d)] *(e)* 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.

[(e)] *(f)* 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) 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, or otherwise 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—An NNMS Participant may enter a Non-Directed Order into the NNMS in order to access the best bid/best offer as displayed in Nasdaq. A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, and must indicate whether it is a short sale, short-sale exempt, or long sales. If after entry but before delivery, a Non-Directed Order becomes non-marketable, the system will hold the order for 90 seconds, after which the order will be returned to the NNMS participant entering the order. The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350. Limit orders may be entered into the system prior to the market's open, but will be held in queue, and if not marketable on the open, will be returned to the participant entering the order. Non-Directed Orders will be processed as described in Rule 4710(b). The NNMS shall not accept Non-Directed Orders that are All-or-None or have a minimum size of execution.

(b) Directed Orders—A participant may enter a Directed Order into the NNMS to access a specific Attributable/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 order 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 Participants 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 1 to 99 minutes.

(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—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(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.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4710(e).

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/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 principal and Agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order 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).

(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).

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other that an Agency Quote) at all times, for a 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 a Nasdaq Quoting Market Participant's Quotes/Orders 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, 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 best three price levels in Nasdaq 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 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 best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. 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, 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 Non-Attributable Quote/Order, the NNMS will automatically display Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the best three price levels in Nasdaq on either side of the market.

(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, displays without attribution to Quoting Market Participants' MMIDs 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 three price levels displayed in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration. Upon the effectiveness of registration as an NNMS Market Maker, NNMS ECN, 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) [Market Makers] *Obligations to and Processing of Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) For each NNMS security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size *(if applicable)* of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq*. [For purposes of this rule, the term ''reserved size'' shall mean that an NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs 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) 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 such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges shall participate in the NNMS 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 in queue to receive an order is and shall deliver an execution to Quoting Market Participants 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; provided however, that the system always shall deliver an order (in lieu of an execution) to the Quoting Market Participant next in queue when the participant that entered the Non-Directed Order into the system is a UTP Exchange that does not provide automatic execution against its Quotes/ Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Non-Directed Orders entered into

the NNMS system shall be delivered to or *automatically executed against* Quoting Market Participants' *Displayed [quotations]* Orders/Quotes *and Reserve Size, including Agency Quotes (if applicable), in price[/]* and then *time priority, subject to the following processing.* For Quotes/Orders *[quotations] at the same price level, the NNMS system will* attempt to access interest in the system in the following priority and order:

(i) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, and Non-Attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), as well as Quotes/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order indicates that the price improvement offered by the specific Quote/Order exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quote/Orders;

(ii) Displayed Quote/Order of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participant's Quote/Orders;

(iii) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a separate quote-access fee to non-subscribers, as well as Reserve Size of Quote/Orders from NNMS ECNs that charges a separate quote-access fee to non-subscribers where the ECN entering such Quote/Order has indicated that the price improvement offered by the specific Quote/Order exceeds the separate quote-access fee the ECN charges, in time priority between such participants' Quote/Orders;

(iv) Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscriber, in time priority between such participants' Quote/Orders; and

(v) Principal Quote/Orders of UTP Exchanges, in time priority between such participants' Quote/Orders [yield priority to all Displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority].

The following exceptions shall apply to the above execution parameters. First, if a Nasdaq Quoting Market Participant 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 own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Second, if Displayed Quote/Orders at a price level are simultaneously exhausted and there is Reserve Size available at that price, when Displayed Quote/Orders are refreshed from Reserve Size the system will establish order-receipt priority for these refreshed Quote/Orders based on the size of a participant's Displayed Quote/Order and then based on the original order-entry time for same-sized refreshed Displayed Quote/Orders.

(C) *Decrementation Procedures*—The size of [displayed quotation] *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[n NNMS] *Non-Directed* [o]*O*rder in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution;* provided, however, that [the execution of] *if* an NNMS order that is a mixed lot (*i.e.,* an order that is for more than a normal unit of trading but not a multiple thereof), *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the next NNMS Market Maker in the odd lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmition 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 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. 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 Quote/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quote/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quote/Orders and Reserve Size interest at the initial price level and at price two minimum trading increments away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed Order can be filled in full within two price levels, there will be no interval delay between price levels and the system will executed the remaindere of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participants as a ''sweep order,'' the system will execute against all Displayed Quote/Orders and Reserve Size at the initial price level and the two price levels being displayed in the Nasdaq Order Display Facility without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

(iii) The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) 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 [an NNMS Market Maker's displayed quotation] Displayed Quote/Order* size on either side of the market in the security has been decremented to zero to NNMS [executions] *processing* Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [auto q] Quote Refresh (*''QR''*)—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the marker'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 zero, by a[n] *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. [A Market Maker's Agency Quotation shall not be subject to the functionality described in the subparagraph.]

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Atributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), 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 next in queue who would be locked, and the order will be executed 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 in queue who would be crossed, and the order will be executed 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 will 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.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing the oldest bid (offer) against the oldest offer (bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] (*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.

[(6)] (*5*) An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker (''Timed Out of the Box''). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a standard grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR 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 its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, and 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. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.

[(A) Nothwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

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

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq:

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.]

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

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

(B) a NNMS 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 NNM*S* 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.

[(8)] *(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[s] (b) *(5)* [(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *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[. Such request must be made] pursuant to Rule 4619. 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 [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] *the* withdrawal *and closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a directed order 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 to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participants shall owe no liability under the Firm Quote Rule to that order and the system will not decrement the receiving Quoting Market Participant's Quote/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)).

[(c)] *(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. 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.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None (''AON'') orders; provided, however, that NNMS will not accept

any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market makers is registered.

(2) Execution Process

(A) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(B) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(C) For odd lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(D) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(E) After the NNMS system has executed an odd lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

As a general matter, Nasdaq shall endeavor to provide fair and equivalent access to the Nasdaq market for UTP Exchanges, as a UTP Exchange provides to its market for Nasdaq Quoting Market Participants and NNMS Order Entry Firms. Unless specified otherwise in these rules or in the Nasdaq UTP Plan, UTP Exchanges may participate in the NNMS as follows:

(1) Order Entry—UTP Exchanges 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 shall be permitted to 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 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 best three price levels in Nasdaq on either side of the market.

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer; are not for the benefit of a broker and/or dealer; 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 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

(a) UTP Exchanges that agree 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.

(b) UTP Exchanges that do not provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry firms, shall accept the delivery 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. If such a UTP Exchange declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Quote/Order that is at a price inferior to the previous price, or if such a UTP Exchange fails to respond in any manner within 5 seconds of order delivery, the NNMS will send the order (or remaining portion thereof) back into the system for delivery to the next Quoting Market Participant in queue. The system will then move the side of such UTP Exchange's Quote/Order to which the declined or partially-filled order was delivered, to the lowest bid or highest offer price in Nasdaq, at a size of 100 shares.

(4) Directed order Processing—UTP Exchanges 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)(1)(C) of this rule.

4711–4714—No Change

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate system service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

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4750. Smallcap Small Order Execution System (SOES)

4751–4757—Deleted

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

In its filing with the Commission, the NASD and Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD and Nasdaq have 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In the original filing, the NASD and Nasdaq proposed enhancing the Nasdaq quotation montage and Nasdaq's main trading platform—the Nasdaq National Market (System (''NNMS''). In particular, Nasdaq proposed to (1) Add a new display to the Nasdaq Workstation II (''NWII'') called the Nasdaq Order Display Facility (''NODF''), which would show the best bid/best offer in Nasdaq and two price levels away, accompanied by the aggregate size at each price level of the ''displayed'' trading interest of market makers, electronic communications networks (''ECN''), and UTP Exchanges; (2) make substantial enhancements to the NNMS, which would improve the efficiency of the current trading platform; (3) allow market makers and ECNs to designate order for ''display'' in Nasdaq on either an attributable (*i.e.*, not anonymous) or non-attributable (*i.e.*, anonymous) basis; (4) establish the Order Collector Facility (''OCF'') as part of the NNMS, which would allow Nasdaq market makers and ECNs to give the Nasdaq system multiple quotes/orders at a single as well as multiple price levels, which would be displayed in the Nasdaq Quotation Montage and the NODF, consistent with an order's parameters; (5) establish the OCF as a single point of order entry and single point of delivery of liability orders and executions; and (6) create an odd-lot processing facility in Nasdaq. In response to comment letters Nasdaq submitted Amendment Nos. 5, 6, and 7, which are described in greater detail below.

a. *Amendment No. 5.* i. *Nasdaq Technology Resources:* The NASD and Nasdaq wish to give all assurances that construction of the Nasdaq order Display Facility (also known as the ''SuperMontage'') will not divert resources from our ongoing decimalization efforts. Nasdaq's SuperMontage development team consists of personnel that are exclusively dedicated to SuperMontage and are completely separate from other Nasdaq software teams. Nasdaq has used outside consultants to augment internal staff where needed for SuperMontage. Nasdaq has not and will not, in any way, divert technology resources from those needed to ready Nasdaq systems for decimal pricing or to meet other critical initiatives.

Nasdaq's trading operations is run in our state-of-the-art Nasdaq Technology Center in Trumbull, Connecticut. Since the core operations of Nasdaq system are unique, Trumbull staff have to write and implement much of the software to ensure Nasdaq's reliable operation. The facility in Trumbull includes the most advanced infrastructure available in computer operations today, including connection to two separate electrical power feeds, it's own power generations, and sophisticated systems that oversee and proactively protect against failure situations.

The quotation facilities and execution and post-trade facilities of Nasdaq currently are operated on two separate computer systems—the Tandem System and the Unisys System. The Tandem System functions as the processor of executions that occur through Nasdaq's trading platforms. The Tandem execution and post-trade systems include the Automated Confirmation and Transaction Service (''ACT''), SelectNet, and the Small Order Execution System (''SOES''). The capacity of the Tandem, which Nasdaq represents is a highly reliable and scalable system, is a function of the number of work paths that can be created in parallel—by adding a module of machine Nasdaq can continue to scale to capacities many times larger than our current capabilities.

The Unisys System functions as the processor of quotations, which are displayed on the Nasdaq WorkStation and are disseminated to vendors and the Public. The Unisys operates in an entirely separate environment from the Tandem system. Unlike the execution and post-trade functions which can be scaled across parallel processors, the Unisys processes all quote updates through a single machine.[11] [12]

As has been the case for many years, the technology staff that programs and maintains the Unisys System and its applications is separate and distinct from the technology staff that programs and maintains the Tandem System. This is because these systems demand a high level of understanding and expertise in how they function, which is a knowledge and skill-set base that is often difficult to develop in a short period of time. The system architecture of the Unisys is vastly different from the system architecture of the Tandem. Similarly, the language that Nasdaq staff uses to code Tandem applications is completely different than the Unisys coding language. Both languages are highly specialized and complex in nature. Thus, it would not be an easy or quick undertaking for a Tandem programmer to learn the architecture and programming language for the Unisys system, and *vice versa.*

Because Nasdaq systems must be highly reliable and because the systems are highly sophisticated and complex, the technology staff must have a deep understanding of their respective systems so that they may react to a system problem in the most expeditious manner. This is necessary to ensure the integrity of the market. Thus, the Nasdaq staff that maintains the Tandem and Unisys systems are by necessity highly skilled and highly specialized ''experts'' in their subject system. This expertise extends not only to programming skill but to system architecture knowledge and agility to ''trouble shoot.'' Conversely, in our opinion it would be extremely difficult and inefficient (if not ill advised) for the Tandem and Unisys staff to attempt to become experts in the other's system, particularly over the short term.

As to SuperMontage, that system is being built using the multi-parallel

[11] [Reserved]

[12] The Unisys System uses only about 62% of its processing capacity, and can transact 700 quotations per second, about twice what our current average peak demand is at the market's opening.

architecture (''MPA'') that runs on a high-performance and highly reliable parallel computing platform on the Tandem System. Nasdaq is modifying its existing Unisys-based quotation platform to accommodate decimal pricing, and that project is staffed with a dedicated Unisys-based development team. Thus, the development team on the Unisys-based decimalization project cannot be drawn onto the Tandem-based SuperMontage project, and *vice versa*. In fact, there are 30 programmers who are dedicated to Nasdaq's efforts to achieve decimals. These resources will not be utilized or otherwise distracted from their efforts to achieve trading in a decimal environment. Nor will any other resources related to achieving decimalization—such as quality assurance and testing personnel—be utilized at the expense of completing decimalization efforts. Personnel resources for decimals will take complete priority over other Nasdaq projects, such as SuperMontage.

With respect to non-personnel resources, the SuperMontage project utilizes dedicated Tandem computing resources for development and integration testing while sharing the actual production testing facilities with other Tandem-based applications. The decimalization of other Tandem legacy applications, such as SOES, SelecNet, and ACT, use other non-conflicting resources.

All of the NASD's international development efforts have been out-sourced to separate and distinct teams, with only two individuals coming from existing NASD staff—neither of whom were involved in any related Nasdaq market systems. All systems development for the international markets is being performed by a joint venture company and has no impact on domestic Nasdaq development or resources. All NASD and NASD Regulation activities have been out-sourced in Electronic Data Systems, which relieves the Nasdaq team of any billing or administrative technology burdens. Systems development for the American Stock Exchange is managed by a fully independent team that is not out-sourced to SIAC.

ii. *Automatic Execution and Order Delivery*: In response to the request of Commission staff, Nasdaq is also responding to a suggestion by one commentor that Nasdaq develop a hybrid order-routing and execution assignment system instead of SuperMontage.[13] Under this alternative proposal, Nasdaq would send orders (not executions) to liquidity providers, and would default to an execution if the liquidity provider did not respond within a specified time frame. The commentor asserts this would be a better approach for reducing dual liability for ECNs, instead of what Nasdaq has proposed *vis a vie* the request to cancel feature.

First, many of the commenters arguments are grounded in the assumption that ECNs will be forced to accept automatic execution. According to the commentor, this is because (as originally proposed) market makers and ECNs that accept automatic execution against their quotes (''auto-ex ECNs'') will have priority to receive non-directed orders over ECNs that accept order deliver (''Order-Deliver ECNs''), regardless of time priority. In Amendment 4 to this filing, we have proposed to alter the order-execution algorithm so that the system no longer determines execution priority based on the manner in which an ECN participates in Nasdaq. Rather, the system will now route non-directed orders to market makers, ECNs that do not charge a quote access fee, and to a UTP-Exchange's non-attributable agency interest, in strict price/time priority as between these market participants. (As re-proposed, non-directed orders will be routed to ECNs that charge an access fee after the interest of market makers, ECNs that do not charge an access fee, and UTP-Exchange's non-attributable agency interest.) Thus, the underlying basis of this commentor's argument is no longer true.

Next, the commentor's counter-proposal that Nasdaq essentially act as an order switch and eliminate automatic execution, is problematic at best. The Commission has long recognized the many benefits that automatic execution provides. Automatic execution ensures a level of certainty that orders from large and small investors alike will be filled almost instantaneously. Certainty of execution is important to all investors, particularly in fast moving markers.

The NASD and Nasdaq developed the Small Order Execution System to address concerns that individual investors have a facility for processing their orders quickly and efficiently. In our view, the commentator's approach could harm investors, particularly small investors, as there no longer would be a method of providing automatic execution to small orders. This would be a step backwards in light of the fact that Nasdaq will soon implement the Nasdaq National Market Execution System (''NNMS''), which will move most trading in Nasdaq (save for ECNs that choose to take order delivery only) to an automatic execution environment.

Additionally, if all market participants only receive orders (as opposed to executions) which they may reject in full or fill partially, the likelihood of investors' orders being ''bounced'' from one market participant/market center to another would substantially increase. This, in turn, would increase the likelihood that orders would be partially executed or not executed at all, and ultimately ''traded through.'' This approach also could result in orders that are entered later in time being filled before orders that are entered earlier in time, depending on how and when the market participant receiving the order responds to the order.

As an illustration of these problems, assume the market is $20–$20 1/16 at 10:00:01 a.m., and the following quotes are being displayed on the bid side of the market:

ECNI $20—1,000 (total, including reserve)
MMA $20—1,000 (total, including reserve)
MMC $19 15/16—100 (total, including reserve)
MMD $19 7/8—2000 (total, including reserve)

Orders are entered and processed as follows:

- At 10:00:02 Customer A enters a marketable limit order to sell 1,000 shares at $19 15/16, which is routed to ECN1. The order resides at ECN1 while ECN1 determines whether to accept, decline, or partially fill the order.
- At 10:00:06 a.m., Customer 2 enters a marketable limit order to sell 500 shares at 20 and Customer 3 enters a market order to sell 500 shares. Both of these orders are executed immediately upon receipt by MMA.
- At 10:00:07 a.m., ECNI determines to decline Customer 1's order, which is routed back in to the system and re-delivered to MMC. MMC then fills 100 shares of Customer 1's order at a price of $19 15/16. Customer 1's order is filled only partially; the remaining 900 shares of Customer 1's order go unfilled because the market has moved to $19 7/8 and the order is no longer marketable.

Note that in the above situation, Customers 2 and 3 had their orders filled in full even though they entered their orders into the system later in time. Additionally, the ''bouncing'' of Customer 1's order results in a partial fill at a price ($19 15/16) that is inferior to the prices that Customers 2 and 3 received. As this illustration shows, surety and efficiency of execution is substantially decreased by the commentor's counter-proposal.

Separately, Nasdaq believes that automatic execution reduces the

[13] *See* Bloomberg Letter.

potential that a market participant may back away from (*i.e.,* refuse to honor) its quote. Under the commentor's counter-proposal, instances of backing away complaints would surely increase. In light of the fact that we believe that backing away will decrease significantly when the NNMS is implemented, it would appear to us that moving to a pure order-delivery environment would be a step backward in terms of streamlining surveillance and reducing regulatory costs for members.

The commentor's suggestion that the system deliver an execution after a specified time period, in our view, could exacerbate the ''dual liability'' that commentor complains of in the first instance. In contrast, Nasdaq believes that Nasdaq's proposal to retrieve an order if there is no response after five seconds is more reasonable and protects against double executions. For example, under the commentor's proposal if an ECN or market maker is having equipment problems and cannot timely decline an order or move its quote out of the way, the system would deliver an execution against a quote that no longer is valid. If the equipment problems of the market maker or ECN prevent it from changing its quote, multiple orders and executions could thereafter be delivered to the same stale quote. Conversely, under our proposal, the order would not execute against a stale quote; rather the system would simply retrieve and route the order to the next available market participant, blank out that market stale participant's quote, and not deliver more orders and executions to that stale quote until the system problems were resolved. Our proposed approach appears to be a more reasonable and measured approach, and eliminated (instead of potentially exacerbating) concerns of dual liability.

In addition, automatic execution significantly reduces the potential for locked and crossed markets. Locked/crossed markets have a negative impact on market quality and can result in disorderly markets. Nasdaq believes that the NNMS will reduce instances of locked/crossed markets because a substantial number of market participant quotes will be subject to automatic execution. In SuperMontage, locked/crossed markets will be eliminated altogether. However, Nasdaq believes that the commentor's proposal would lessen the system's efficacy in reducing and eliminating locked/crossed markets. The system presumably would not move stale quotes out of the way and hence resolve a locked/crossed market; instead, the system would keep delivering orders and defaulting to executions against a stale quote. The quote would have to be manually removed before the lock/cross could be resolved.

Lastly, Nasdaq recognizes that no approach will eliminate all of the potential problems associated with a system that relies strictly on automatic execution or order deliver. Nasdaq has proposed the alternative approach in this filing to accommodate the needs of diverse market participants, while assuring that a minimum level of the protections and benefits offered by automatic execution is built into the system. Recognizing that ECNs act as agent only, we have given ECN's a choice of how to participate in Nasdaq, as well as the tools for eliminating dual liability. In this way, Nasdaq believes that our proposal strikes a reasonable balance between protecting investors and ensuring fair and orderly markets by providing automated executions, while also meeting this specific needs of market participants.

ii. *Sweep Orders and Request to Cancel:* On a similar matter, Commission staff has asked us to specifically address how the sweep order and the request to cancel function will interact for market makers and ECNs that accept automatic execution. As noted in Amendments 3 and 4 to this filing, a market participant would be able to set a parameter on an individual order so that the order would execute against all interest (*i.e.,* displayed and reserve interest) at the three price levels being displayed in the NODF at the time of entry, without pausing five seconds in between each displayed price (''Sweep Order''). However, a Sweep Order may only execute through a maximum of the two price levels displayed in the NODF (and into the third price level). If the Sweep Order were not executed in full at the third price level, the order would pause for five seconds between each subsequent price level.

For example, assume that at 10:00:01 a.m., the inside market in Stock G is $104.55 to $104.60, and the following quotes/orders are being displayed in the system on the bid side of the market:

MMA $104.55—1,000 (total, including reserve)
MMB $104.50—2,000 (total, including reserve)
ECN1 $104.45—9,000 (total, including reserve)
MMC $104.45—1,000 (total, including reserve)

At 10:00:02 a.m., Institution Q enters a 10,000 share market sell order (through a market maker), which is designated as a Sweep Order. since the order will be filled in full by the interest that is at the 3 price levels being displayed in Nasdaq, Institution Q's order is filled in full with no time delay between prices. If at 10:00:02 a.m., while the Sweep Order were executing against the quotes/orders in Nasdaq, an internal subscriber of ENC1 also wished to execute against the $104.45 for 9,000 shares being displayed in Nasdaq, before filling the subscriber's order, ENC1 could send a request to cancel the order to Nasdaq. If Nasdaq had already executed against the 9,000 shares, ENC1 would send a message to its customer declining the execution because the quote/order had filled *viz a vie* the Sweep Order. If the Nasdaq had not executed against the 9,000 shares, ENC1's request to cancel would be granted, the internal execution could occur, and the remainder of Institution Q's order would be executed against MMC.

iv. *System Roll Out:* As Nasdaq explained in Amendment No. 3 to this filing, they understand concerns that the system should be rolled out in phases, and they will attempt to roll out the system on a measured basis. In response to Commission staff request, Nasdaq is providing further detail on the planned roll-out schedule.

v. *Notification of Changes, Coding and Testing:* If the Commission approves this filing, it would be Nasdaq's plan (consistent with previous practice) to give market participants and vendors at least 90 days notification of a change in system specifications. At the time that Nasdaq gives notification, they plan to give market participants the new specification so that they can begin to analyze the system changes and take appropriate measures to implement the changes. During this period, most market participants will begin to code their systems. Throughout this period, Nasdaq staff will work with market participants to answer any system and specification-related questions and issues.

At least 60 days prior to system implementation, Nasdaq plans to give participants notice of testing capabilities–*i.e.*, specific testing dates and notification of the availability of a testing environment. Lastly, at least 30 days prior to system implementation, Nasdaq plans to make available a testing environment for firms to begin testing their software and hardware (if applicable). Additionally, Nasdaq plans to hold at least two full day, mock trading sessions on weekend days. This will allow market participant to train their personnel on the new system and to participate in a real-time trading environment.

vi. *Stock Phase-In:* Nasdaq plans to roll out the systems similar to the manner in which we implemented the SEC's Order Handling Rules in the Nasdaq environment. Specifically, it is their intention to implement the system on ''day one'' for a limited number of securities (*e.g.,* 100) which represent a cross-section of Nasdaq-listed stocks. On a regular basis thereafter, Nasdaq will include 100 new stocks in the system until the system is implemented for all Nasdaq-listed securities. Nasdaq will select a cross section of stocks to be included in each group of 100 securities to be rolled out during a particular week.

The purpose of the roll out is to give Nasdaq and its members the opportunity to observe and gain experience with the new system and to give Nasdaq the opportunity to make any adjustments and changes to the system (in consultation with and approval by the Commission), if and when necessary. Accordingly, while Nasdaq has proposed to included 100 additional securities on a rolling basis, they seek to retain a reasonable degree of latitude to adjust the schedule if experience and events so dictate. Nasdaq believes this approach reasonably responds to the comments, in that it should give market participants time to adequately identify and address issues (technical or otherwise) that may arise when the system is implemented. Additionally, Nasdaq will work closely with the Commission during the roll-out phase to ensure a smooth transition to the new system.

vii. *SuperMontage is Voluntary:* Nasdaq is reiterating that the NODP is completely voluntary. They understand that market participants may not wish to relinquish their order book to Nasdaq and that they may provide valuable services away from the central Nasdaq market. As Nasdaq has stated in the past, market makers and ECNs will retain ownership of their orders displayed in the Nasdaq system and it is our intention to file a rule change in the near future that would allow ENCs and market makers to share in revenues gained from their execution. Nasdaq also reiterates that nothing requires or compels market participants to give their order book to Nasdaq. ECNs and market makers are free to give Nasdaq only their top of file (consistent with the SEC's Order Handling Rules), or they can choose to give Nasdaq all or some of their orders. Nor does anything require that executions in Nasdaq securities occur through the SuperMontage or other Nasdaq facility. To be sure, any of these options for handling and executing orders would be consistent with NASD rules.

While the proposal provides a central means for accessing liquidity in Nasdaq and other market centers, it in no way establishes the SuperMontage as the sole means for providing or accessing liquidity. NASD members, individual investors, and members of other exchanges are free to leave their orders with any market center they chose. Moreover, subscribers of ECNs are free to use the execution services offered by the ECNs to access liquidity within that market center. Nasdaq notes that a number of ECNs have recently publicly announced plans to link with one another, independent of the Nasdaq network and execution systems. Nothing in the NODF proposal prohibits ECNs and other market participants from establishing links or order-routing arrangements. The SuperMontage will provide a central, but not exclusive, means of accessing liquidity and of exposing trading interest to the market.

viii. *Best Execution:* As re-proposed in Amendment No. 4 to this filing, ECNs that charge an access fee, would be executed after UTP Exchange agency interest, market makers, and ECNs who do not charge an access fee because such a fee represents an increase in trading costs and clearly an inferior price.[14] Thus, orders of market makers, ECNs that do not charge an access fee, and agency orders of UTP Exchanges, would be executed in strict price/time priority, but orders of ECNs that charge an access fee would be executed after the aforementioned interest at a price level were exhausted. We stated that this prioritization is consistent with common industry practice today, where a market participant will route its orders first to market makers and ECNs that do not charge a fee and then to ECNs that charge an access fee, to ensure the investor incurs the lowest possible trading costs and best execution. One commentor stated, however, that such a prioritization was contrary to best execution because ECNs offer a price better than a market maker at the NBBO even after access fees have been fully deducted from the execution price. This sometimes occurs because ENCs permit subscribers to trade in finer increments than recognized by Nasdaq's quotation system and such finer-priced orders are rounded to the nearest quotation increment when they are displayed in Nasdaq.

Nasdaq disagrees with these assertions. They believe that when Nasdaq implements decimals—which will occur prior to SuperMontage—such rounding will not occur to the extent that it does today. That is, in a decimals environment the quotation increments will most likely be fine enough to match the trading increment. Accordingly, if an ECN charges a fee over and above its quote, that ECN's quote will represent an inferior price in comparison to an ECH that charges a fee should be accessed behind the ECN that does not charge.

b. *Amendment No. 6.* i. *Odd lot Processing:* In Amendment No. 4, we proposed to change the odd lot process to of the Nasdaq Order Display Facility (''NODF'' or ''SuperMontage'' as follows: (1) Add an ''odd-lot exposure limit'' for market makers: (2) provide a market maker interval delay between odd-lot executions against the same market maker; and (3) establish an odd-lot order entry parameter of one order per second, per firm.[14] Under the re-proposal, while odd-lots would be processed in a round-robin fashion against a market maker even if it is not at the inside, odd lots would be processed only against those market makers who have an available exposure limit. In Amendment No. 4, Nasdaq noted that under the re-proposal, the system would not execute an odd-lot order against a market maker unless the market maker had a sufficient exposure limit to fill the odd-lot order. They also noted that if no market maker had an odd-lot exposure, the system would suspend processing of odd-lots until exposure interest was refreshed. Odd-lot executions would decrement the exposure limit (not the quote or order sizes displayed in the Nasdaq Quotation Montage and/or NODF) by the size of the odd-lot order. When a market maker's odd-lot exposure was reduced to 0, the participant would be taken out of the odd-lot rotation unless and until the market maker sets a new exposure limit.

Despite the potential for odd-lot processing in a security to suspend if no market maker establishes an exposure limit, Nasdaq believes that competitive forces to capture and service this segment of the market will yield a swift and robust processing of odd-lot transactions. Additionally, we will closely monitor odd-lot processing during the roll-out of SuperMontage and we will be prepared to consider modifications to the system should the quality of odd-lot processing deteriorate.

[14] We note that Commission staff and at least one commentor raised concerns about ECN fees and best execution. *See e.g.,* ITG Letter.

[15] In SOES today, odd lots are processed against only those market makers who are at the inside bid or offer, in round-robin fashion. An odd-lot execution does not decrement a market maker's quote.

ii. *Implementation Date:* Nasdaq intends to implement SuperMontage as soon as practicable after decimal pricing is fully implemented in Nasdaq. As stated in previous amendments, Nasdaq will provide sufficient lead time for all market participants to have the opportunity to adequately prepare and test their internal systems for SuperMontage functionality before implementing its new system.

iii. *Order Execution Algorithm:* As re-proposed in Amendment No. 4 to this filing, ECNs that charge a separate access fee, would be executed after UTP Exchange agency interest, market makers, and ECNs who do not charge a separate access fee because such a fee represents an increase in trading costs and clearly an inferior price.[16] Thus, orders of market makers, ECNs that do not charge a separate access fee, and agency orders of UTP Exchanges, would be executed in strict price/time priority, but orders of ECNs that charge a separate access fee would be executed after the aforementioned interest at a price level were exhausted. Nasdaq stated that this prioritization is consistent with common industry practice today, where a market participant will route its orders first to market makers and ECNs that do not charge an access fee and then to ECNs that charge an access fee, to ensure the investor incurs the lowest possible trading costs and best execution.

The prioritization described above is based on the current environment in which ECNs charge a separate fee when a market participant accesses its quote. We understand that in a decimals environment, ECNs may change the manner in which they charge fees and may develop the capability to reflect access fees in their published quotes. Nasdaq is strongly committed to working with ECNs to address the related trade-reporting and clearing issues, as well as the significant technology changes that would need to be addressed in order for ECNs to reflect their fees in their quotes. Once these issues and technology changes are resolved, these ECN quotes would be given the same priority for non-directed orders as market maker quotes/orders and non-attributable agency orders of UTP Exchanges.

Additionally, when decimal pricing is implemented in Nasdaq, we understand that ECNs and market makers may wish to reflect orders in Nasdaq that are at an increment finer than one penny. This could occur, for example, if an ECN charges a separate access fee that is less than one penny and that separate access fee is included in the quoted price. In the event that priced quotations shrink to this level, Nasdaq is committed to re-examining the order execution algorithm (and the related technology, legal, and policy issues) to determine whether it is prudent and feasible to rank orders based on quotation increments of less than one penny.

iv. *UTP Exchange Participation:* As noted in Amendment No. 4, Nasdaq has offered to provide automatic execution against Nasdaq market participants that take auto-ex for non-directed orders emanating from the floor of the Chicago Stock Exchange, so long as Chicago agrees to provide automatic execution for orders sent to the Chicago by Nasdaq market participants. This is consistent with Nasdaq's standing position that it is willing to provide automatic execution against its market if a UTP Exchange is willing to provide automatic execution against its specialist's quotes.

Commission staff has noted that the proposed rules do not address the situation where a UTP Exchange may not wish to participate in automatic execution, but rather may wish to take order delivery against its quotes.[17] In response to comments by Commission staff, Nasdaq has amended the proposed rules to address the situation where a UTP Exchange declines to participate in automatic execution, but rather wishes to take order delivery against its quotes (''Order-Delivery UTP Exchange''). Nasdaq had not previously included such rule language because that situation had not presented itself. In fact, no other UTP exchange has approached Nasdaq to discuss a reciprocal arrangement for market access. In the absence of a specific request by a UTP Exchange to participate in the SuperMontage on an order-delivery basis, Nasdaq is able to offer only generic rule language, similar to the proposed treatment of ECNs receiving order delivery in the Nasdaq system, to govern that hypothetical situation.

Under the proposed generic rules, if an Order-Delivery UTP Exchange is next in queue to receive a non-directed Liability Order, Nasdaq will deliver the order to the UTP Exchange up to the size of the UTP Exchange's quote. The system will decrement the Order-Delivery UTP Exchange's quote by an amount equal to the size of the delivered order. If an Order-Delivery UTP Exchange declines or partially fills the order, Nasdaq will send the order (or remaining portion thereof) back into the system for immediate delivery to the next available quoting market participant (*i.e.,* market maker, ECN, UTP Exchange). If the Order-Delivery UTP Exchange declines or partially fills the order without immediately transmitting a revised quote at an inferior price, or fails to respond in any manner within 5 seconds of order delivery, Nasdaq will presume equipment failure and immediately enroute the order to the next market participant in queue. After doing so, the system will automatically re-set the UTP Exchange's un-accessed bid or offer to the lowest bid or highest offer then being displayed in the system, at a size of 100 shares. Order-Delivery UTP Exchanges wishing to access the best price in the Nasdaq market may enter non-directed Liability Orders into the order collector facility, which will, in turn, deliver that order (rather than an automatic execution) to next quoting market participant. This delivery shall take place regardless of whether the recipient participates in automatic execution.

In the event an UTP Exchange determines to participate in the NODF on an order-delivery basis, Nasdaq will revisit applicable rule language and, if necessary, make appropriate changes to its rules. As always, Nasdaq will continue to work with the Commission with any UTP Exchange wishing to participate in the NODF on an order-delivery basis, in a manner consistent with Nasdaq's long-standing policy of supporting fair and equivalent access among competing market centers.

c. *Amendment No. 7.* i. *Proposed Amendments:* (A) *Order Execution Algorithm.* As proposed in Amendment No.6 to this filing, orders of ECNs that charge a separate quote-access fee would be executed after UTP Exchange non-attributable agency interest, market makers, and ECNs that do not charge a separate quote-access fee because such a fee represents an increase in trading costs and clearly an inferior price. Some ECNs claim that they should not be prioritized behind market makers, non-attributable agency orders of UTP Exchanges, and ECNs that do not charge a separate quote-access fees because they (ECNs) often provide price improvement over their displayed quote price. Never the less, such treatment is consistent with previously articulated Commission policy.

The Commission has suggested that ECNs could address the quote-access fee issue by reflecting the fee in their public

[16] We note that Commission staff and at least one commentor raised concerns about ECN fees and best execution. *See e.g.*, ITG Letter.

[17] This is because the Chicago Stock Exchange is currently the only Nasdaq UTP Plan Participant that has established the requisite interface for transmitting to the processor quotation and last sale information.

quote.[18] As stated in Amendment No. 6 Nasdaq is committed to working with the Commission and ECNs to implement this solution to the ECNs' concern.[19] We also stated that ECN quotes would be given the same priority for non-directed orders as market maker quotes/ orders and non-attributable agency orders of UTP Exchanges, if ECNs develop the capability to reflect quote-access fees in their published quotes and the related legal, technology, and policy issues were resolved.[20] As a result, in Amendment No. 6 Nasdaq proposed technical rule language that clarifies that we would give ECNs that include the quote-access fee in their quote the same priority as same-priced orders from UTP agency interest, market makers, and ECNs that do not charge a fee. The ECNs claim that including the fee in the quote will not completely resolve their concerns because: (1) ECN orders may be priced in increments less than a penny; and (2) ECNs do not charge the same fee to all subscribers, but rather charge a sliding fee based on a subscriber's volume. Nasdaq has addressed both of these arguments in our previous letter to you dated July 18, 2000, and for the reasons set forth in that letter, we continue to find their arguments unpersuasive.

Regardless, in an attempt to address and resolve this issue and be fully responsive to the Commission, we are amending the filing to offer a second alternative to ECNs. Specifically, ECNs that charge a separate access fee will have the ability to indicate on an order-by-order basis whether the price improvement offered by the order exceeds the access fee charged. If the price improvement exceeds the access fee, Nasdaq will rank that order for execution purposes with same-priced orders of market makers, ECNs that do not charge an access fee, and non-attributable agency interest of UTP Exchanges. For example, if an ECN charges an access fee of a half a cent (.05 cents) on an order to buy at $20.005, that order would be ranked with orders to buy a $20.00 from market makers, ECNs, and non-attributable agency interest of UTP Exchanges. (Note that the $20.005 buy order would normally be rounded down to $20.00 and would be ranked behind market makers, ECNs that do not charge a separate access fee, and non-attributable agency interest of UTP Exchanges if it were entered by an ECN that charged a separate access fee.) We believe this addresses the ECN's concerns in a fair and even-handed manner.

(B) *Order Routing of SuperMontage.* Instinet and Bloomberg also raise concerns with the order-routing capabilities of the system. First, they claim that the order-routing capabilities of the non-directed order process prevent their customers from using a Nasdaq system to preference them (*i.e.*, the ECN) or other market participant with which they have a relationship. They also claim that the directed order processing is an ineffective way of preferencing orders because all directed orders must be designated as non-liability under system rules.[21]

Nasdaq proposes to change the directed order processing rules, so that ECNs and market makers can elect to receive ''liability orders'' through the directed order process of the system. Under the proposed change, a market participant (market maker or ECN) could choose to receive against its quote a directed order that is also a liability order (*i.e.*, an order that when delivered to the market participant's quote imposes an obligation to respond in a manner consistent with the SEC's firm quote rule). A market participant could also choose to accept against its quote, only *non-liability* directed orders, as is currently contemplated by SuperMontage rules. If a market participant chooses to accept directed liability orders, Nasdaq will append an indicator to the quoting market participant's MMID, showing that the market participant is available to receive directed liability orders. ECNs opting to receive directed liability orders would avoid dual liability because, like today, they would have the ability to fill, partially execute, or decline a directed or non-directed liability order that is presented to the ECN, consistent with the Commission's firm quote rule.

Nasdaq believes this addresses the ECNs' concerns, as it will allow market participants to continue to preference liability orders to those market participants that wish to receive them and to transact business in that manner. This will also preserve an important feature currently available in Nasdaq, where a market participant can sweep the quotes in order to access liquidity for size, at prices at and near the inside market.

ii. *Response to Comments:* Other than the proposed amendments outlined above, Nasdaq believes that neither Instinet nor Bloomberg raise any new or significant arguments that we have not already addressed. We would, however, like to briefly address their claim that Nasdaq is unfairly competing with the ECNs by enhancing its trading and execution services. They suggest that Nasdaq should merely provide a means for displaying quotations, and that Nasdaq should not provide execution services.

Nasdaq believes that this idea is preposterous. Providing a means for accessing liquidity and trading interest in an essential and core function of a market. Nasdaq—like every other equities market in the United States, if not the world—provides both quotation and execution services. As the Commission is aware, Nasdaq has operated the Small Order Execution System (''SOES'') since 1984, and the SelectNet service since 1988. Both of these execution services are integrated with Nasdaq's quotation system, and provide great value to public investors as well as market professionals. Eliminating this capability would be a step backward for the market and investors alike. In essence, certain ECNs are trying to design an inefficient market structure to the detriment of investors and Nasdaq, in order to preserve and enhance their commercial interests. That is, Instinet's and Bloomberg's approach would create an inefficient and fragmented market structure, as market participants would be able to view trading interest, but be unable to quickly and efficiently access such interest. This would be contrary to section 11A and 15A of the Exchange Act as it would foster inefficiencies in the execution of securities, minimize opportunities to obtain best execution, limit market linkages, and result in

[18] As proposed by the SEC, the maximum fee that the ECN charges to non-subscribers accessing the ECN's quote would be deducted from a bid or added to the offer price.

[19] *See* Amendment No. 6.

[20] As we stated previously, SuperMontage will not be implemented until decimal pricing is introduced in Nasdaq, where the minimum quotation increment is one penny. *See* July 18, 2000 Letter. In a penny environment, a quote that includes a fee will clearly represent an inferior price when compared to same-priced quotes of market participants that do not charge an access fee. *Id.* It would be unfair to the investing public and countrary to principals of best execution if Nasdaq's system routed an order to an ECN that charges a fee when that same order could be executed at a better price by a market participant that does not charge a fee. *Id.* We believe that including ECN access fees in the quotes will go a long way to improving price transparency in Nasdaq.

[21] Under system rules, a directed order must be designated as: (1) All-or-None and be at least 100 shares greater than the size of the displayed quote/order of the market participant to which the order is directed; or (2) a Minimum Acceptable Quantity order (''MAQ'') with an MAQ value of at least 100 shares greater than the displayed amount of the quote/order of the participant to which the order is directed. Because of these conditions, when presented to a market participant's quote a directed order will impose no obligation under the SEC's and NASD's firm quote rules. This is to limit the potential for dual liability that market participants currently face as the result of being required to accept liability orders against the same quote from two separate points of access—the SelectNet and Small Order Execution systems.

disorderly markets, and ultimately harm investors.

Instinet and Bloomberg ignore the fact that SuperMontage provides investors with greater information about trading interest in the market and a more efficient means for accessing that interest. Nasdaq, like any other national securities exchange or national securities association, has the right and responsibility to improve upon inefficiencies in our market. As Nasdaq has stated in the past, the goal of SuperMontage is to better the Nasdaq market structure *vis a vis* increased transparency, reduced fragmentation, enhanced liquidity, and improved access to trading interest in the market.

iii. *ECN Micharacterizations of SuperMontage:* Nasdaq wishes to address a few of the continuing, seemingly intentional, mischaracterizations about the SuperMontage proposal that are contained in Instinet's and Bloomberg's submissions. Specifically, Instinet and Bloomberg mischaracterize at least three aspects of SuperMontage. These ECNs claim that: (1) the five-second maximum time for ECNs to respond to delivered orders would increase their risk of loss from canceled trades; (2) the system response to a locking or crossing quote or order would expose ECNs to automatic executions; and (3) the system forces the unexecuted portion of a non-directed, previously-marketable limit order, to be displayed in the SuperMontage.

As to the first argument, Nasdaq notes that the SuperMontage will be programmed to retrieve from an order-delivery participant, such as an ECN, any order to which the ECN fails to respond within five seconds. (As noted in previous correspondence,[22] the five-second maximum response time in practice is seven seconds, because two seconds are added to this time period for internal Nasdaq system processing. As designed, the five-second maximum response time is a system parameter that can be quickly changed and adjusted, with the Commission's approval of course). The ECNs claim that the five-second maximum response time would exacerbate losses they currently incur when they accept an order from Nasdaq that is canceled before the ECN can execute against and fill the order.

The Nasdaq believes that this is incorrect. SuperMontage will protect ECNs against cancellations better than SelectNet does today. Today, orders that are entered into SelectNet are time-stamped only with the time of order entry, and not with the time the order is delivered to an ECN. When the ECN receives the order, the ECN has no knowledge of the time that the order was actually delivered or how much time remains for the ECN to respond to the order before it may be canceled. In SuperMontage, an order will be stamped when Nasdaq delivers the order to a market participant. Thus, when the ECN (or other order-delivery participant) receives the order, it can compare the order's delivery time stamp to the current system time. If the order's delivery time is less than 7 seconds, the ECN will know that the order is valid and that it can execute against that order. Additionally, changes to the order messaging/confirmation process will provide greater information and improvements for ECNs. Specifically, in SelectNet when an ECN attempts to execute an order, it receives an acknowledgement that Nasdaq has received the ECN's attempt to execute—it does not receive a confirmation that the Nasdaq system has accepted the ECN's execution. An ECN knows it has actually executed the SelectNet order only when it receives an execution report from SelectNet, confirming that the transaction has occurred. In contrast, when the ECN attempts to execute against a delivered order in the SuperMontage environment, the system will immediately send a message back to the ECN confirming the execution has occurred. The ECN will not have to wait for the execution report to confirm that the transaction has actually occurred. These two pieces of information greatly enhance the ECNs' ability to protect against losses arising from cancellations.

Additionally, SuperMontage improves the current SelectNet order-cancellation process. In SuperMontage an order cannot be canceled if it has exited Nasdaq's system and is in delivery to an ECN (or other order-delivery participant). Only orders that have not been delivered to an ECN and are in the Nasdaq system can be canceled if the entering market participant so requests. Today, a firm entering an order into SelectNet can cancel the order after 10 seconds regardless of the order's status (*i.e.,* in delivery or in Nasdaq's system) while the market participant that received the order is attempting to execute. It then becomes a race back to the Nasdaq Tandem, with the winner completing the transaction request. In SuperMontage, an order that has exited the Nasdaq system and is in delivery to an ECN cannot be canceled. Thus, if a market participant requests to cancel an order, the system will hold the cancel request until the ECN completes interacting with the delivered order (*i.e.,* the ECN executes, partially executes, or declines the order). For example, if an order is delivered to an ECN and the entering market participant request to cancel, the system will "pend" (or hold) the cancel request. If the ECN declines or partially executes the order, the order will re-enter the system and the cancel request will be honored, thus canceling the original order (or the unexecuted balance or the original order for partially executed orders). The solution we have proposed achieves the same end and is a far less drain on capacity, than a "hear beat" approach that Bloomberg has suggested.

As to the second argument, Instinet claims that when a market participant enters into the system a quote or order that would lock or cross the prevailing market, the system will automatically convert that into an order and execute it. Since, according to Instinet, they are unable to avoid inadvertently entering locking or crossing quotations, they will be exposed to automatic executions that would force them to take proprietary positions, which they cannot do.

The Nasdaq believes that this is also inaccurate. When a market participant, including an ECN, enters a locking or crossing quote into the system, they will receive a system warning the same as they do today. In order to complete the quote entry, the participant is required to override the system warning. After over-riding the warning, the quote update results in an order being generated that accesses the quote(s) which would be locked or crossed. Thus, ECNs can avoid "automatic executions" for its own quote updates by not overriding the system warning.

Nor are ECNs at risk if another participant enters a quote or order that locks or crosses an existing ECN quote. If that occurs, the system will again issue a warning to the party attempting to lock/cross the market. If that party overrides the system warning, the system will then convert the locking or crossing quote, but it will only deliver an automatic execution to market participants that accept them (*i.e,* market maker, ECN that accepts automatic execution, *etc.*). If an order-delivery ECN's quote is locked or crossed, the system will convert the locking or crossing quote into an order and deliver it to the ECN; it will not deliver an automatic execution to an ECN that chooses to accept only order delivery against its quote. In either case, there is little risk to the order delivery participant of an unwanted automatic execution.

[22] *See* Letter from Richard G. Ketchum, President, NASD, to Annette Nazareth, Director, Division, Commission, dated July 18, 2000.

The third argument—that the system forces certain orders from market makers and ECNs to be displayed in the SuperMontage—is also incorrect. According to Bloomberg, if a marketable limit order is entered into the system on a non-directed basis and only a portion of the order is executed because all interest against which it is marketable has been taken out, the remaining portion of the order will be displayed as quote (or trading interest) in the Nasdaq montage and/or SuperMontage. Bloomberg fails to recognize that the system will give the entering firm and its customer a choice of how the unexecuted portion of a marketable limit order should be handled. That is, a firm can designate an order as ''immediate or cancel,'' which will result in the unexecuted portion of a limit order being canceled and not being displayed in the SueprMontage. Rather, the unexecuted portion of the previously marketable limit order will be returned to the entering participant. If a market maker or ECN does not designate an order as immediate or cancel, the unexecuted portion of a previously marketable limit order, will be displayed as a quote in the system if it is entered by a quoting market participant. Thus, the system offers great flexibility in order handling, and in no way force orders to be displayed in the SuperMontage.

iv. *Treatment of Order-Delivery Participants:* At the request of the Commission, Nasdaq is providing this explanation of how the system will deliver non-directed orders when an order-delivery ECN is at the inside market. In the non-directed order process, when Nasdaq is accessing the quote of a delivery participant that is first in line to receive an execution, the system will deliver orders up to that participant's available size before accessing displayed interest of the next market participant in queue who is at the same price. For example, there are three market participants alone at the inside bid of $20. ECNI, which is ranked first for execution purposes, is displaying 1,000 shares at $20 on the bid side of the market, with 5,000 in reserve. Five market sell orders are then entered into the system for the following amounts: (1) 100 shares; (2) 100 shares; (3) 100 shares; (4) 100 shares; (5) 700 shares. These market sell orders would be processed as follows. The first 100 share order would be delivered to ECN1, reducing its displayed size to 900. The second, third, and fourth orders would also be delivered to ECN1, further reducing its displayed size to 600. When the fifth order is delivered to ECN1, its displayed size would be is reduced to 0 and the remaining 100 would access the displayed size of the next market participant in queue which is at $20.

v. *Request for Accelerated Approval:* Nasdaq requests that the Commission use its broad authority under section 19 of the Exchange Act to approve the filing and Amendments 5, 6, and 7 Immediately, without further delay in the process. Nasdaq does not believe, as Bloomberg suggests, that Amendments 5, 6, and 7 to this filing are required to be republished for comment before the Commission may act on the filing. Rather, Nasdaq believes that it is wholly consistent with the Commission's broad authority under sections 19(b)(2)(B) and 19(b)(3)(B) of the Exchange Act, to approve the filing and the amendments expeditiously. Specifically, we request that the Commission exercise its discretion and approve this filing and all related amendments (including Amendments 5, 6, and 7) under Exchange Act section 19(b)(2)(B), or in the alternative under Exchange Act section 19(b)(3)(B). As set forth below in greater detail, we believe that there is good cause for approving the rule filing and all related amendments (including Amendments 5, 6, and 7) on an expedited basis, pursuant to Exchange Act section 19(b)(2)(B).[23] Alternative, Nasdaq also believes the rule filing and Amendments 5, 6, and 7 should be approved summarily pursuant to section 19(b)(3)(B), as it is necessary in order to protect investors and maintain fair and orderly markets.[24]

Nasdaq believes that we have met the standards for the Commission to approve the rule filing under either section 19(b)(2)(B) or section 19(b)(3)(B). As the filing and subsequent amendments explain, SuperMontage will provide significant benefits and protections for investors, such as increased transparency, reduced fragmentation, enhanced liquidity, and improved access to trading interest in the market. SuperMontage will also reduce instances of locked/crossed markets, and provide for a smoother opening process. Accordingly, notions of investor protection dictate that the filing should be approved on an expedited basis. In addition Amendments 5, 6, and 7, respond directly to comments and SEC questions, and do not alter the fundamental nature of the proposal, as re-published for comment in Amendment 4. Rather, Amendments 6 and 7 further specify how orders from ECNs' that charge a separate access fee will be treated. Additionally, Amendment 7 amends the SuperMontage's directed order process, by providing greater options as to how a directed order may be handled.

Conversely, republication would further delay the Commission's review of this proposal, would give ECNs another opportunity to submit re-packaged arguments, but contribute no new information to the review process. As Instinet admits in its August 2, 2000 submission, it is not raising new issues, but rather restating issues identified in previous comment letters and meetings with SEC staff. From Instinet's own admission, is clear that republication would add nothing to the public review process, which we note has been extensive. SuperMontage has withstood intense scrutiny by the public and the Commission. The original proposal and Amendments 1, 2, 3, and 4 were published in the **Federal Register** and were the subject of voluminous public comments. The Commission diligently pored through the comments and requested clarification of numerous issues raised by commentors. Nasdaq then thoroughly responded to the public's and the Commission's concerns by further explaining the operation and rationable of the system, clarifying the filings, and making numerous changes to the system as originally proposed. Finally, the Commission has afforded ECNs the extraordinary opportunity for face-to-face meetings with high-ranking Commission and Nasdaq staff. Congress, in enacting section 19(b), could not have envisioned a more thorough review of a self-regulatory organization's rule filing or greater access to the process, at least for ECNs.

Nasdaq notes that there is substantial precedent for approving SuperMontage on an accelerated basis. For example, in approving the National Market Execution System (''NNMS''),[25] the Commission noted that Amendments 1, 2, and 3 merely ''respond to concerns raised by the commentors, provide additional representations concerning operation of the proposal, and clarify the proposed changes.''[26] Likewise, SuperMontage Amendment Nos. 5, 6, and 7 simply respond to public comments and clarify limited aspects of

[23] Section 19(b)(2)(B) of the Exchange Act provides, in relevant part, that the Commission may approve a proposed rule change prior to the 30th day after its publication in the **Federal Register** for good cause shown.

[24] Section 19(b)(3)(B) of the Exchange Act provides, in relevant part, that a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors or the maintenance of fair and orderly markets.

[25] *See* Exchange Act Release No. 34–42344 (January 14, 2000).

[26] *Id.,* at 51.

the previously noticed proposal. Considered on their own merits, these Amendments would qualify for expedited effectiveness under section 19(b)(2)(B) and 19(b)(3)(B). In light of the rigorous review described above and the fact that republication would add nothing to the Commission's review process, the filing and Amendments 5, 6, and 7 should not be subject to additional scrutiny.[27]

2. Statutory Basis

The NASD and Nasdaq believe that the proposed amendments are consistent with the provisions of sections 15A(b)(6) and (b)(11) of the Act,[28] as well as sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[29] Section 15A(b)(6) [30] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) of the Act [33] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Section11A(a)(1)(C) of the Act [32] states that is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 11A(a)(1)(D) [33] states that Congress finds that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

The NASD and Nasdaq believe that the amendments to the odd-lot process balance the concerns raised by commenters regarding potential gaming and the need for a fair and orderly method of executing odd-lot orders. The NASD and Nasdaq believe this proposed change would prevent fraudulent and manipulative acts, since it would reduce the opportunity for gaming. Additionally, the proposed changes to the five-second interval delay, provide a balance between the need of institutional investors and market professionals for speed, while providing greater price continuity for individual investors. Thus, the NASD and Nasdaq believe the proposal is consistent with sections 15A(b)(6) and (b)(11),[34] as well as section 11A(a)(1)(C) of the Act.[35]

The NASD and Nasdaq believe the proposed changes to the order execution algorithm addresses competitive concerns raised by some ECNs, in that all ECNs that do not charge a quote-access fee (whether they accept automatic execution or order delivery) would be treated in time priority. Additionally, the change as it related to ECNs that charge a fee addresses concerns about best execution. Specifically, this change ensures that an investor's order would be routed to the market participant in Nasdaq that is displaying the best price, when considering quote access fees. Accordingly, the NASD and Nasdaq believe that the changes are consistent with sections 15A(b)(6) and (b)(11) of the Act,[36] and sections 11A(a)(1)(C) and 11A(a)(1)(D).[37]

The NASD and Nasdaq believe that the changes regarding the handling of agency orders from UTP Exchanges is consistent with Congress view of a national market system. That is, this approach assures that a customer's order in a Nasdaq security, no matter where it is entered in the National Market System, would be executed on a price/time priority basis. Accordingly, the NASD and Nasdaq believe the proposal is consistent with sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[38]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do 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 self-regulatory organization 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 Amendment Nos. 5, 6, and 7, including whether Amendment Nos. 5, 6, and 7 are 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 in 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 Amendment Nos. 5, 6, and 7 to file number NASD–

[27] The Commission has decided not to grant accelerated approval to Amendment Nos. 5, 6, and 7 at this time, and instead is soliciting comments on the Amendments to the proposal to be submitted within 15 days of the date of this notice in the **Federal Register**.

[28] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[29] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

[30] 15 U.S.C. 78o–3(b)(6).

[31] 15 U.S.C. 78o–3(b)(11).

[32] 15 U.S.C. 78k–1(a)(1)(C).

[33] 15 U.S.C. 78k–1(a)(1)(D).

[34] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[35] 15 U.S.C. 78k–1(a)(1)(C).

[36] 15 U.S.C. 78o–3(b)(6) and (b)(11).

[37] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

[38] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).

99–53 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20686 Filed 8–10–00; 4:51 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of Connecticut entered February 29, 2000, the United States Small Business Administration hereby revokes the license of Capital Impact Corporation, a Connecticut corporation, to function as a small business investment company under the Small Business Investment Company License No. 01/01–0335 issued to Capital Impact Corporation on March 1, 1985 and said license is hereby declared null and void as of June 1, 2000.

United States Small Business Administration.

Dated: August 3, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–20641 Filed 8–14–00; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and it's expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2000 [65 FR 10590–10591].

DATE: Comments on this notice must be received on or before September 14, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Edgell, DOT Drug Program Office, Office of the Secretary, S–1, DEPC, Room 10317, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002. Telephone: (202) 366–3784.

SUPPLEMENTARY INFORMATION:

Office of the Secretary, Drug Program Office

Title: U.S. Department of Transportation (DOT) Breath Alcohol Testing Form.

OMB Control Number: 2105–0529.

Affected Public: Transportation industries.

Abstract: Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement an alcohol testing program in various transportation industries. Breath-alcohol technicians (BAT) must fill out testing form. The form includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Custody and control is essential to the basis purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

Need: This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

Burden Estimate: The estimated burden is 1 hour annually. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503. Attention DOT Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 8, 2000.

Michael Robinson,

Information Resource Management, U.S. Department of Transportation.

[FR Doc. 00–20604 Filed 8–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Laredo International Airport, Laredo, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Laredo International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Otis T. Welch, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jose Luis Flores, Airport Director, Laredo International Airport, at the following address: Laredo International Airport, 5210 Bob Bullock Road, Laredo, Texas 78041.

FOR FURTHER INFORMATION CONTACT: Mr. Guillermo Y. Villalobos, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Laredo International under the provisions of the AIR 21.

On June 2, 2000, the FAA determined that the request to release property at Laredo International Airport submitted by the city met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may

[39] 17 CFR 200.30–3(a)(12).

[39] 17 CFR 200.30–3(a)(12).