

# **RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES**

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### **3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES**

#### **3010. Supervision**

(a) Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules. Nasdaq members shall comply with NASD Rule 3010 as if such Rule were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3010 by complying with NASD Rule 3010 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3010 are being performed by NASD Regulation on behalf of Nasdaq.

(b) For purposes of this Rule:

(1) references to "NASD Rules", "rules of NASD" shall be construed as references to "Nasdaq Rules",

(2) the term "registered person" in NASD Rule 3010(b)(2)(I) shall be defined as "any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the 1000 Series of the Nasdaq Rules,

(3) references to Article V, Section 3 of the Association's By-Laws shall be construed as references to Nasdaq Rule 1031,

(4) references to Rule 2210 shall be construed as references to Nasdaq Rule 2210,

(5) references to registration with NASD shall be construed as references to registration with Nasdaq, and

(6) references to "the Association's District Office having jurisdiction over the member" shall be construed as references to the "Association".

(c) Pursuant to the Rule 9600 Series, Nasdaq may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements contained in paragraph (b)(2) of NASD Rule 3010, as applied to Nasdaq members through Nasdaq Rule 3010. A member seeking an exemption must file a written application pursuant to the Rule 9600 Series within 30 days after receiving notice or obtaining actual knowledge that it meets one of the criteria in paragraph (b)(2)(H) of NASD Rule 3010. A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (b)(2)(B) of NASD Rule 3010 or, alternatively, to seek an exemption hereunder, as appropriate; such a member may not seek relief from the

### **IM-3010. Guidance on Heightened Supervision Requirements**

Nasdaq members shall comply with NASD Notice to Members 97-19 as if such Rule were part of Nasdaq's Rules.

### **3011. Anti-Money Laundering Compliance Program**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 3011 as if such Rule were part of Nasdaq's rules.

### **3012. Supervisory Control System**

(a) Members and persons associated with a member shall comply with NASD Rule 3012 as if such Rule were part of Nasdaq's rules.

(b) For purposes of this Rule, references to "NASD Rules" shall be construed as references to "Nasdaq Rules".

### **3013. Annual Certification of Compliance and Supervisory Processes**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to IM-3013 shall be construed as references to Nasdaq IM-3013, and

(3) references to "MSRB rules" shall be deleted.

### **IM-3013. Annual Compliance and Supervision Certification**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Interpretive Material IM-3013 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to "NASD Rules" shall be construed as references to "Nasdaq Rules",

(2) references to NASD Rule 3013 and Rule 2110 shall be construed as references to Nasdaq Rule 3013 and Nasdaq Rule 2110,

(3) references to “NASD members” shall be construed as references to “Nasdaq Members”,

(4) references to “the NASD Board of Governors” shall be construed as references to “the Board of Directors of The NASDAQ Stock Market LLC”, and

(5) references to “MSRB rules” shall be deleted.

### **3020. Fidelity Bonds**

(a) Each member required to join the Securities Investor Protection Corporation who has employees and who is a member in good standing of another self-regulatory organization shall follow the applicable fidelity bond rule of the self-regulatory organization to which it is designated by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d- 1 thereunder.

(b) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3020 as if such Rule were part of Nasdaq’s Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3020 by complying with NASD Rule 3020 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3020 are being performed by NASD Regulation on behalf of Nasdaq.

(c) For purposes of this Rule:

(1) references to an “Association member” shall be construed as references to a “Nasdaq member”, and

(2) references to Article I, paragraph (q) of the By-Laws shall be construed as references to Nasdaq Rule 1011,

(d) Pursuant to the Rule 9600 Series, any member subject to paragraph (c) of NASD Rule 3020, through the application of Nasdaq Rule 3020(b), may apply to Nasdaq for an exemption from such requirements. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the member’s business that results in a lower net capital requirement. Nasdaq may issue an exemption subject to any condition or limitation upon a member’s bonding coverage that is deemed necessary to protect the public and serve the purposes of this Rule.

### **3030. Outside Business Activities of an Associated Person**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3030 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 3040 shall be construed as references to Nasdaq Rule 3040.

### **3040. Private Securities Transactions of an Associated Person**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3040 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3050 shall be construed as references to Nasdaq Rule 3050, and

(2) references to "immediately family members (as defined in Rule 2790)" shall be construed to mean a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

### **3050. Transactions for or by Associated Persons**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 3050 as if such Rule were part of Nasdaq's Rules.

### **3060. Influencing or Rewarding Employees of Others**

Nasdaq Members and persons associated with a member shall comply with NASD Rule 3060 as if such Rule were part of Nasdaq's Rules.

### **3070. Reporting Requirements**

(a) Nasdaq Members and persons associated with a member shall comply with NASD Rule 3070 as if such Rule were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3070 by complying with NASD Rule 3070 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3070 are being performed by NASD Regulation on behalf of Nasdaq.

(b) For purposes of this Rule, the requirement of NASD Rule 3070(d) to respond to NASD with respect to any customer complaint, examination, or inquiry shall be construed as a requirement to respond to NASD and Nasdaq.

### **3080. Disclosure to Associated Persons When Signing Form U-4**

Nasdaq Members shall comply with NASD Rule 3080 as if such Rule were part of Nasdaq's Rules. In lieu of incorporating in the written statement the language in paragraph (2) of NASD Rule 3080, members shall include the following provision:

A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under Nasdaq rules. Such a claim may be arbitrated under Nasdaq rules only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

### **3090. Transactions Involving Nasdaq Employees**

(a) When a member has actual notice that a Nasdaq employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to Nasdaq.

(b) No member shall directly or indirectly make any loan of money or securities to any Nasdaq employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in Nasdaq Rule 3060, no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Nasdaq employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.

## **3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION**

### **3110. Books and Records**

#### **(a) Requirements**

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of Nasdaq and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.

#### **(b) Reserved**

**(c) Customer Account Information**

Each member shall maintain accounts opened after January 1, 1991 as follows:

(1) for each account, each member shall maintain the following information:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and

(D) if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer;  
and

(C) whether customer is an associated person of another member;  
and

(3) for discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510 of these Rules, the member shall:

(A) obtain the signature of each person authorized to exercise discretion in the account;

(B) record the date such discretion is granted; and

(C) in connection with exempted securities other than municipals, record the age or approximate age of the customer.

(4) For purposes of this Rule, Rule 2310, and Rule 2510, the term

“institutional account” shall mean the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

**(d) Changes in Account Name or Designation**

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of Nasdaq rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term “easily accessible place” is used in SEC Rule 17a-4.

For purposes of this paragraph (d), a person(s) designated under the provisions of Nasdaq rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

**IM-3110. Customer Account Information**

(a) Reserved

(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).

(c) Reserved

**(d) Record of Written Complaints**

Each member shall keep and preserve in each office of supervisory jurisdiction, as defined in Rule 3010, either a separate file of all written complaints of customers and

action taken by the member, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint as maintained in such office.

**(e) “Complaint” Defined**

A “complaint” shall be deemed to mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

**(f) Requirements When Using Predispute Arbitration Agreements With Customers**

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award.

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2) (A) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding

any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) (A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this Rule, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) No predispute arbitration agreement shall include any condition that:

(A) limits or contradicts the rules of any self-regulatory organization;

(B) limits the ability of a party to file any claim in arbitration;

(C) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(D) limits the ability of arbitrators to make any award.

(5) If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the

class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7) Reserved

**(g) Negotiable Instruments Drawn From A Customer's Account**

No member or person associated with a member shall obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each member shall maintain the authorization required for a period of three years. This provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

**(h) Order Audit Trail System Record keeping Requirements**

(a) Nasdaq Members shall comply with NASD IM-3110(h) as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 6951 shall be construed as references to NASD Rule 6951, as applied to Nasdaq members by Nasdaq Rule 6950.

**(i) Holding of Customer Mail**

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

**3120. Use of Information Obtained in Fiduciary Capacity**

Nasdaq Members shall comply with NASD Rule 3120 as if such Rule were part of Nasdaq's Rules.

**3121. Custodian of the Record**

A member who files a Securities and Exchange Commission Form BDW shall designate on the Form BDW, as the custodian of the record, a person associated with the member at the time that the Form BDW is filed.

### **3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3130 (except NASD Rule 3130(a)) as if such Rule were part Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 9557 shall be construed as references to Nasdaq Rule 9557 and references to Rule 3131 shall be deleted.

### **IM-3130. Restrictions on a Member's Activity**

(a) A member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Interpretive Material 3130 (except IM-3130(d)) as if Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) references to Rule 3131 shall be deleted, and

(2) references to the opinion and belief of the Board of Governors shall be construed to reflect the policy of Nasdaq with respect to the application of Rule 3130 and IM-3130.

### **3140. Approval of Change in Exempt Status Under SEC Rule 15c3-3**

(a) Application — For the purposes of this Rule, the term "member" shall be limited to any member of Nasdaq who is subject to SEC Rule 15c3-3 and is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 promulgated thereunder. Further, the term shall not be applicable to any member that is subject to Section 402.2(c) of the rules of the Treasury Department.

(b) A member operating pursuant to any exemptive provision as contained in subparagraph (k) of SEC Rule 15c3-3 under the Act (Rule 15c3-3), shall not change its method of doing business in a manner which will change its exemptive status from that governed by subparagraph (k)(1) or (k)(2)(ii) to that governed by subparagraph (k)(2)(i); or from subparagraph (k)(1), (k)(2)(i) or (k)(2)(ii) to a fully computing firm that is subject to all provisions of Rule 15c3-3; or commence operations that will disqualify it for continued exemption under Rule 15c3-3 without first having obtained the prior written approval of Nasdaq.

(c) In making the determination as to whether to approve, deny in whole or in part an application made pursuant to paragraph (b), Nasdaq staff shall consider among other things the type of business in which the member is engaged, the training, experience and qualifications of persons associated with the member, the member's procedures for safeguarding customer funds and securities, the member's overall financial and

operational condition and any other information deemed relevant in the particular circumstances and the time these measures would remain in effect.

### **3150. Reporting Requirements for Clearing Firms**

(a) Nasdaq Members shall comply with NASD Rule 3150 as if such Rule were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3150 by complying with NASD Rule 3150 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3150 are being performed by NASD Regulation on behalf of Nasdaq.

(b) Pursuant to the Rule 9600 Series, Nasdaq may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms and conditions from any or all of the provisions of this Rule that it deems appropriate.

### **IM-3150. Exemptive Relief**

(a) Upon written request for exemptive relief pursuant to the Rule 9600 Series, Nasdaq generally will grant an exemption from the reporting requirements of Rule 3150 to a self-clearing firm that:

(1) derives, on an annualized basis, at least 85 percent of its revenue from transactions in fixed income securities;

(2) conducts an institutional business that settles transactions on an RVP/DVP basis, provided that such exemption from reporting shall apply only with respect to such institutional business unless Nasdaq determines that any other remaining business otherwise qualifies for an exemption under this IM-3150 or is *de minimis* in nature; or

(3) does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., that engages solely in proprietary trading, or that conducts business only with other broker-dealers or any other non-customer counter-parties).

(b) Upon written request for exemptive relief pursuant to the Rule 9600 Series, Nasdaq also generally will grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm meets one of the above-stated grounds for exemptive relief.

(c) Any self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted

by Nasdaq from the reporting requirements of Rule 3150 must promptly report such change in circumstances to Nasdaq and NASD, Department of Member Regulation, and commence compliance with the reporting requirements of Rule 3150.

## **3200. SETTLEMENTS**

### **3210. Reserved**

### **3220. Adjustment of Open Orders**

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, except where a cash dividend or distribution is less than one cent (\$.01), as follows:

(1) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower minimum quotation variation used in the primary market, provided that if there is more than one minimum quotation variation in the primary market, then the greater of the variations shall be used;

(2) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher minimum quotation variation used in the primary market as specified in paragraph (a)(1) and subtracting that amount from the price of the order; provided further, that the size of the order shall be increased by (A) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (B) dividing the result by the denominator of the ratio of the dividend or split, and (C) rounding the result to the next lower round lot; and

(3) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in subparagraph (1) or (2), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in subparagraph (2), above.

(b) If the value of the distribution cannot be determined, the member shall not execute or permit such order to be executed without reconfirming the order with the customer.

(c) If a security is the subject of a reverse split, all open orders shall be cancelled.

(d) The term "open order" means an order to buy or an open stop order to sell,

including but not limited to “good ‘til cancelled,” “limit” or “stop limit” orders which remain in effect for a definite or indefinite period until executed, cancelled or expired.

(e) The provisions of this Rule shall not apply to:

(1) orders governed by the rules of another registered national securities exchange or the NASD;

(2) orders marked “do not reduce” where the dividend is payable in cash;

(3) orders marked “do not increase” where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by this Rule;

(4) open stop orders to buy;

(5) open sell orders; or

(6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to SEC Rule 10b-17.

### **3230. Clearing Agreements**

(a) All clearing or carrying agreements entered into by a member shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) opening, approving and monitoring customer accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements;

(7) acceptance of orders and execution of transactions;

(8) whether, for purposes of the Commission’s financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing member; and

(9) the requirement to provide customer notification under paragraph (g)

of this Rule.

(b) (1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act ("DEA") (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.

(2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).

(3) Pursuant to the Rule 9600 Series, Nasdaq may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

(c) (1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts.

(2) The clearing member must retain as part of its books and records required to be maintained under the Act and Nasdaq's rules, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph if it retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA (or, if none, to its appropriate regulatory agency or authority), either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

(3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member pursuant to paragraph (c)(1) and the reports requested by or supplied to the introducing member as of such date. The clearing member must also provide a copy of the notice to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority).

(4) Pursuant to the Rule 9600 Series, Nasdaq may exempt a member or person associated with a member from the requirements of this paragraph for good cause shown in instances where the introducing organization is an affiliated entity of the carrying organization.

(d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments that are satisfactory to the carrying organization.

(e) Whenever a clearing member designated to Nasdaq for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to Nasdaq for review and approval.

(f) Whenever an introducing member designated to Nasdaq for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to Nasdaq for review.

(g) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

(h) Members shall be exempt from Rule 3230 to the extent any party to the clearing agreement is subject to a comparable rule of the self-regulatory organization designated pursuant to SEC Rule 17d-1 as the party's designated examining authority.

### **3300. TRADING**

#### **3310. Publication of Transactions and Quotations**

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or

indicated to be only nominal quotations.

### **IM-3310. Manipulative and Deceptive Quotations**

Rule 2110 provides that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 3310 provides that:

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

Rule 2120 provides that:

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

It would be inconsistent with the above provisions for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this interpretation, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

### **3320. Offers at Stated Prices**

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

### **3330. Payment Designed to Influence Market Prices, Other than Paid Advertising**

No member shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this Rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

### **3340. Reserved**

### **3350. Short Sale Rule**

(a) With respect to trades executed on Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the “ex” date may be reduced by the value of such distribution.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a registered market maker registered in the security on Nasdaq in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member’s market making functions, will not be considered bona fide market-making activity.

(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.

(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked “long”.

(4) Sales by a member to offset odd-lot orders of customers.

(5) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(6) Sales by a person of a security for a special arbitrage account if the person then owns another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between

the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(7) Sales by a person of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.

(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(9) Sales of securities as to which all short sale price tests have been suspended by operation of a Pilot Order issued by the Commission pursuant to SEC Rule 202T.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party to avoid the application of this Rule.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account to avoid the application of this Rule.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that the broker or dealer's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this Rule, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) the options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq National Market security or an options class on a qualified stock index; and

(B) the short sale is an exempt hedge transaction.

(2) For purposes of this paragraph:

(A) (i) An “exempt hedge transaction,” in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq National Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,<sup>1</sup> provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.

(ii) An “exempt hedge transaction,” in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq National Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

- a. the security sold short is a component security of the index underlying such offsetting index options position;
- b. the index underlying such offsetting index options position is a “qualified stock index;” and
- c. the dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.

(iii) Notwithstanding any other provision of this paragraph (h), any transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that in either case is independent of an options market maker’s market making functions, will not be considered an “exempt hedge transaction.”

(B) A “qualified options market maker” shall mean an options market maker who has received an appointment as a “qualified options market maker” for certain classes of stock options on Nasdaq National Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) A “qualified options exchange” shall mean a national securities exchange that has approved rules and procedures providing for:

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<sup>1</sup> The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

(i) designating market makers as qualified options market makers, which standards shall be designed to identify options market makers who regularly engage in market making activities in the particular options class(es);

(ii) the surveillance of its market maker's utilization of the exemption set forth in paragraph (h)(1) to assure that short sales effected by qualified options market makers are exempt hedge transactions and that other non-qualified market makers are not utilizing the exemption; and

(iii) authorization of Nasdaq to withdraw, suspend or modify the designation of a qualified options market maker but only if a qualified options exchange has determined that the qualified options market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(D) A "qualified stock index" shall mean any stock index that includes one or more Nasdaq National Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq National Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq National Market securities is less than 8% at the end of any subsequent calendar quarter.

(E) "Aggregate current index value" shall mean the current index value times the index multiplier.

(F) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of an options market maker that is in contravention of this paragraph (h), provided that the member did not know or have reason to know that the options market maker's short sale was in contravention of this paragraph (h).

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) the warrant market maker is a registered Nasdaq market maker for the warrant; and

(B) the short sale is an exempt hedge transaction that results in a fully hedged position.

(2) For purposes of this paragraph, an "exempt hedge transaction" shall

mean a short sale in a Nasdaq National Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.<sup>2</sup> Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, will not be considered an "exempt hedge transaction."

(3) Nasdaq may withdraw, suspend or modify the exemption for a warrant market maker upon determination that the market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(4) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of a warrant market maker that is in contravention of this paragraph (i), provided that the member did not know or have reason to know that the warrant market maker's short sale was in contravention of paragraph (i).

(j) Pursuant to the Rule 9600 Series or on Nasdaq's own motion, Nasdaq may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

(k) Definitions:

(1) The term "short sale" shall have the same meaning as contained in SEC Rule 200, adopted pursuant to the Act.

(2) The term "block positioner" shall have the same meaning as contained in SEC Rule 200 for "Block Positioner" adopted pursuant to the Act,:

(l) This section shall be in effect until December 15, 2005.

### **IM-3350. Short Sale Rule**

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities, Nasdaq has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by registered Nasdaq

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<sup>2</sup> The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.

market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a registered Nasdaq market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, Nasdaq wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) First, as the Rule indicates, bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the Rule. However, short sales of a security of a company involved in a merger or acquisition will be deemed bona fide market-making activity if made to hedge the purchase or prospective purchase (based on communicated indications of interest) of another security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. The purchase of a security of a company involved in a merger or acquisition made to hedge a short sale of another security involved in the merger or acquisition, which sale was made in the course of bona fide market making activity, will not cause the sale to be deemed unrelated to normal market-making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.

(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. Nasdaq does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by Nasdaq as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule 3350.

(b) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer. Nasdaq has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid

the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

(c) (1) Rule 3350 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, Nasdaq wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule 3350.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an “up bid” for the purpose of facilitating a short sale, Nasdaq would consider such activity to be a manipulative act and a violation of Nasdaq’s Short Sale Rule. Nasdaq also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a “down bid” for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in Nasdaq in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 3350. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) Nasdaq believes that members’ activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, Nasdaq will consider any such activity as a violation of Rule 3350.

(d) Nasdaq calculates changes to the inside bid displayed in the Nasdaq Market Center and disseminates a “bid arrow” via Nasdaq data feeds for market participants to use to comply with Rule 3350 when utilizing the execution functionality of the Nasdaq Market Center. The initial bid arrow each day shall be calculated at market open as follows.

(1) For stocks subject to Rule 4709(c), the initial bid arrow after

completing the process described in Rule 4709(c)(1) through (3) shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the system begins processing pursuant to Rule 4709(c)(4).

(2) For stocks described in Rule 4704(d), the initial bid arrow at the conclusion of the Nasdaq Opening Cross shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the Nasdaq Opening Cross concludes.

### **3360. Short-Interest Reporting**

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total “short” positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. For the purposes of this rule, the term “customer” includes a broker/dealer. Reports shall be made as of the close of the settlement date designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule, “short” positions to be reported are those resulting from “short sales” as that term is defined in SEC Rule 200, under the Act, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act.

### **3370. Prompt Receipt and Delivery of Securities**

#### **(a) Purchases**

No member or person associated with a member may accept a customer’s purchase order for any security unless it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

#### **(b) Long Sales**

No member or person associated with a member shall accept a long sale order from any customer in any equity security unless the order meets the requirements applicable to long sales set forth in Regulation SHO. To the extent a member or person associated with a member does not have physical possession or control of the securities, the member or person associated with a member must document, at the time the order is taken, the communication with the customer as to the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver

them to the member by settlement date. For purposes of this rule, the term "customer" includes a non-member broker-dealer.

**3380. SEC Rule 19c-1 -- Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges**

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

**3385. SEC Rule 19c-3 -- Governing Off-Board Trading by Members of National Securities Exchanges**

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended (other than a put option or call option issued by the Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule,

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "exchange" shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act.

(3) The term "covered security" shall mean:

(A) Any equity security or class of equity securities which

(i) was listed and registered on an exchange on April 26, 1979, and

(ii) remains listed and registered on at least one exchange continuously thereafter;

(B) Any equity security or class of equity securities which

(i) was traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by Section 12(f)(1)(A) of the Act, and

(ii) remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter; and

(C) Any equity security or class of equity securities which

(i) is issued in connection with a statutory merger, consolidation or similar plan or reorganization (including a reincorporation or change of domicile) in exchange for an equity security or class of equity securities described in paragraph (b)(3)(A) or (b)(3)(B) of this rule,

(ii) is listed and registered on an exchange after April 26, 1979, and

(iii) remains listed and registered on at least one exchange continuously thereafter.

(4) The term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term "effective transaction reporting plan" shall mean any plan approved by the Commission pursuant to Rule 11Aa3-1 for collecting, processing and making available transaction reports with respect to transactions in an equity security or class of equity securities.

### **3390. SEC Rule 11Ac1-4 – Display of Customer Limit Orders**

Nasdaq Market Makers and ITS/CAES Market Makers shall comply with the obligations of SEC Rule 11Ac1-4 and any interpretations issued thereunder. Solely for the purposes of this Rule and SEC Rule 11Ac1-4, Nasdaq Market Makers and ITS/CAES Market Makers shall be deemed to be exchange specialists.

### **3400. Reserved**

### **3500. EMERGENCY PREPAREDNESS**

### **3510. Business Continuity Plans**

(a) Nasdaq Members shall comply with NASD Rule 3510 as if such Rule were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform

certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 3510 by complying with NASD Rule 3510 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 3510 are being performed by NASD Regulation on behalf of Nasdaq.

### **3520. Emergency Contact Information**

(a) Each member shall report to Nasdaq, via such electronic or other means as Nasdaq may require, prescribed emergency contact information for the member. The emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must promptly update its emergency contact information, via such electronic or other means as Nasdaq may require, in the event of any material change. Each member must review and, if necessary, update its emergency contact information, including designation of two emergency contact persons, within 17 business days after the end of each calendar quarter to ensure the information's accuracy. The member's Executive Representative (as defined in Rule 1150), or his or her designee, which designation must be in writing, must conduct such review and any update. Furthermore, members must have adequate controls and procedures to ensure that only the Executive Representative, or his or her written designee, may perform the review and update.