

is made from net profits, rule 19a-1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a-1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a-1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 3000 portfolios of registered investment companies that are management companies may be subject to rule 19a-1 each year, and that each portfolio on average mails two statements per year to meet the requirements of the rule.² The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1.5 hours per statement. The total annual burden for all portfolios therefore is estimated to be approximately 9,000 burden hours.

The staff estimates that approximately one-third of the total annual burden (3,000 hours) would be incurred by a senior administrative officer with an average hourly wage rate of approximately \$158 per hour, and approximately two-thirds of the annual burden (6,000 hours) would be incurred by senior clerical staff with an average hourly wage rate of \$25 per hour.³ The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$624,000 ((3,000 hours × \$158) + (6,000 hours × \$25)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance

² A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

³ All hourly rates in this Supporting Statement are derived from the average annual salaries reported for employees outside of New York City in Securities Industry Association, Management and Professional Earnings in the Securities Industry (2003) and Securities Industry Association, Office Salaries in the Securities Industry (2003).

with the collection of information required by rule 19a-1 is mandatory for management companies that make written statements to shareholders pursuant to section 19(a) of the Act. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 6, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. E6-5685 Filed 4-14-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 19d-2, SEC File No. 270-204 and OMB Control No. 3235-0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 19d-2 (17 CFR 240.19d-2) under the Securities Exchange Act of 1934 (the "Act") prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-2 is 3 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: April 6, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. E6-5689 Filed 4-14-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53628; File No. 4-517]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between The NASDAQ Stock Market LLC and the National Association of Securities Dealers, Inc.

April 10, 2006.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 17d-2 thereunder,² notice is hereby given that on April 6, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") and the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act³, among other things, requires every national securities exchange and registered securities association ("SRO") to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁶ Rule 17d-1, adopted on April 20, 1976,⁷ authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d-1 deals only with an SRO's obligation to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the

federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.⁸ This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

Nasdaq and NASD filed with the Commission a plan for allocating regulatory responsibilities pursuant to Rule 17d-2. The proposed plan is intended to reduce regulatory duplication for firms that are common members of Nasdaq and NASD. This proposed plan would transfer to the NASD certain regulatory responsibilities for each common member. Included in the plan is an attachment ("The Nasdaq Stock Market LLC Rules Certification for 17d-2 Agreement with NASD," referred to herein as the "Nasdaq Certification") that delineates the Nasdaq rules that would be subject to the plan. The Nasdaq Certification lists every Nasdaq rule that, under the plan, the NASD would bear responsibility for overseeing and enforcing with respect to common members.

The text of the proposed 17d-2 plan is as follows:

Agreement Between the National Association of Securities Dealers, Inc. and The Nasdaq Stock Market LLC Pursuant To Section 17(D) And Rule 17d-2

This agreement (Agreement) pursuant to Section 17(d) of the Securities Exchange Act of 1934 (Act) and Rule 17d-2 thereunder is by and between the National Association of Securities Dealers, Inc. (NASD), a Delaware corporation registered as a national

securities association subject to regulation by the Securities and Exchange Commission (SEC) under the Act, whose principal offices are located at 1735 K Street, N.W., Washington, D.C. 20006, and The NASDAQ Stock Market LLC (Nasdaq), a Delaware limited liability company registered as a national securities exchange subject to regulation by the SEC under the Act, whose principal offices are located at 1 Liberty Plaza, New York, NY (NASD and Nasdaq hereafter may be referred to together as the parties or individually as a party).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD and Nasdaq hereby agree as follows:

1. *Term.* This Agreement shall be effective on the later of either: (i) the date that Nasdaq commences operations as a national securities exchange; or (ii) the date the SEC approves this Agreement under Section 17(d) (Effective Date).

2. *Entities.* Nasdaq is a registered national securities exchange, as defined in Section 6 of the Act, and a self-regulatory organization, as defined in Section 3(a)(26) of the Act (SRO). NASD is a registered securities association, as defined in Section 15A of the Act and an SRO. Both parties are responsible for fulfilling certain regulatory obligations and performing certain regulatory functions under the Act.

3. *Members.* The parties have brokers or dealers as their members, and some of the brokers or dealers are members of both such parties (hereinafter, members of both such parties and persons associated with such members are referred to collectively as Common Members). Each party has regulatory obligations under the Act and the rules of the party for Common Members. A broker or dealer shall be considered a member of one of the parties only upon the approval of the membership application of that broker or dealer. A broker or dealer with a pending membership application shall not be considered a Common Member.

4. *Structure.* Under Rule 17d-2, the parties may agree, in a plan or agreement, to provide for coordinated, non-duplicative regulation and enforcement, and to serve other purposes of the Act: (1) to allocate certain regulatory responsibilities that both parties have to one of the parties; (2) to relieve a party of its regulatory responsibility and obligations for a certain function under the Act if the other party agrees to exercise such responsibility and undertake such obligation for the specified function on

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

⁵ Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session. 32 (1975).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

⁷ Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

⁸ Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

behalf of the other party; and (3) to provide for the allocation of expenses reasonably incurred by the party agreeing to exercise the responsibility and undertake the obligation for the specified function in the plan or agreement.

Pursuant hereto, Nasdaq is responsible for identifying the rules of Nasdaq that are identical or substantially similar to NASD rules. After review and confirmation by NASD, Nasdaq shall in a certification, as attached hereto and made a part of this Agreement (Nasdaq Certification), certify the rules of Nasdaq that are identical or substantially similar to NASD rules (Common Rules) and, therefore, are the subject of this Agreement. Each year following the commencement of operation of this Agreement, or more frequently if required by changes in either the rules of Nasdaq or NASD, Nasdaq shall submit an updated list of Common Rules to NASD for review which shall add Nasdaq rules not included in the current Nasdaq Certification that are identical or substantially similar to NASD rules; delete Nasdaq rules included in the Nasdaq Certification that are no longer identical or substantially similar to NASD rules; and confirm that the remaining rules on the Nasdaq Certification continue to be Nasdaq rules that are identical or substantially similar to NASD rules. Within 30 days of receipt of such updated list, NASD will confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. NASD shall not assume regulatory responsibility for, and Nasdaq will retain full responsibility for (unless allocated pursuant to Rule 17d-2 otherwise than under this Agreement), surveillance and enforcement with respect to trading activities or practices involving solely Nasdaq's own marketplace. Also subject to this Agreement are SEC rules applicable to Common Members. NASD shall assume regulatory responsibility for such SEC rules with respect to Common members to the same extent that the NASD assumes regulatory responsibility with respect to NASD members.

5. *Services.* NASD agrees to provide the following services (Services) as related to Common Members:

(a) *Membership Activities.* (1) NASD will receive and process in the Central Registration Depository (CRD) applications, reports, information, filings, fingerprint cards, and notices generally relating to: (a) an associated person status, and (b) registration as a principal of any type, a representative of

any type, or any other type of employee required to register or required to pass a qualification examination.

(2) NASD will receive and process in the CRD documentation of notice of the passage of the appropriate qualification examination for such principal, registered representative, or other employee required to qualify by examination and, subsequently, forward such information to Nasdaq.

(3) Upon request, NASD will advise Nasdaq of any changes in the status of members (including officer and partner changes), and registered personnel as reflected in CRD.

(4) NASD shall collect and forward monthly to Nasdaq, any applicable fees for the account of Nasdaq. NASD agrees to provide Nasdaq with an accounting of such fees in January of each year. Nasdaq will reimburse NASD for reasonable expenses incurred for performing these accounting functions.

(5) Common Members will be required to send to NASD all letters, termination notices or other material relating to their associated persons.

(6) When, as a result of processing letters, termination notices, or other material relating to their associated persons, NASD becomes aware of a statutory disqualification with respect to a Common Member, NASD shall determine, pursuant to Section 15A(g) or Section 6(c) of the Act, the acceptability or continued acceptability of the person to whom such statutory disqualification applies, but will not make a determination regarding Nasdaq membership or participation, or association of a person with Nasdaq member. NASD shall advise Nasdaq in writing of its actions in this regard. Nasdaq shall, within 30 days of receiving such information from NASD, determine whether to permit a statutorily disqualified Common Member to become or to remain a Nasdaq member or a participant, or a person associated with a member. Nasdaq will advise NASD of its decision. Nasdaq will reimburse NASD for reasonable expenses incurred for notifying Nasdaq of the NASD's decision regarding a statutory disqualification under Section 15A(g) or Section 6(c) of the Act.

(b) *Branch Office Activities.* NASD will receive and process notices, filings, or registrations received regarding a Common Member's branch offices, including notices, filings, or registrations to designate offices of supervisory jurisdiction, and agrees to provide notice to Nasdaq of such filings. Nasdaq will reimburse NASD for reasonable expenses incurred for providing Nasdaq notification.

(c) *Examinations.* For the portion of those routine, cycle, cause, and special examinations that NASD will perform for Common Members under this Agreement, NASD will, upon request, provide copies of the relevant portion of such examination reports to Nasdaq. Nasdaq will reimburse NASD for reasonable expenses incurred for providing examination reports to Nasdaq. This undertaking is limited to examining Common Members for compliance with:

(1) The federal securities laws and the rules and regulations thereunder, except that it does not include examining any Common Member for compliance with financial responsibility rules on behalf of Nasdaq (unless the SEC has designated NASD as the DEA for the Common Member under Rule 17d-1);

(2) Other applicable federal laws, rules and regulations; and

(3) The rules of Nasdaq that are identical or substantially similar to NASD rules because they have been certified by Nasdaq as such.

(d) *Violations.*

(1) If NASD discovers an apparent violation of a federal statute or regulation or Nasdaq rule listed above in paragraph 5(c) for which NASD agrees to examine a Common Member for compliance, NASD shall investigate the apparent violation, notify Nasdaq of the results of the investigation and provide a copy of any written report, determine if additional regulatory action is required, take any disciplinary or other regulatory action required, and provide notice to Nasdaq at the termination of the matter by enforcement or other action. If a disciplinary proceeding is conducted by NASD, NASD will apply the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules. Nasdaq will reimburse NASD for reasonable expenses incurred for providing any information, notices, or reports contemplated under this provision.

(2) If NASD discovers an apparent violation of a Nasdaq Rule not within the examination responsibility of NASD as described above in paragraph 5(c), NASD shall notify Nasdaq and refer the matter to Nasdaq for further examination, investigation, or enforcement or regulatory action, as determined by Nasdaq.

(e) *Enforcement.* For Common Members, NASD will enforce compliance with:

(1) The federal securities laws and the rules and regulations thereunder, except that it does not include examining any Common Member for compliance with financial responsibility rules on behalf of Nasdaq (unless the SEC has

designated NASD as the DEA for the Common Member under Rule 17d-1);

(2) Other applicable federal laws, rules and regulations; and

(3) The rules of Nasdaq that are identical or substantially similar to NASD Rules because they have been certified by Nasdaq as such.

6. *Information Sharing.* The parties agree to provide each other with the following information:

(a) *General.* A party shall promptly furnish to the other party any information that the party determines indicates possible financial, operational, or other problems of any Common Member, including, but not limited to, early warning indications of potential problems resulting from unusual accumulations or concentrations of securities positions or market fluctuations.

(b) *Reports.* Upon reasonable request, a party will make available promptly to a requesting party any financial, operational, or related report filed with the party by a Common Member, files, information on customer complaints, termination notices, copies of an examination report, investigative material, or other documents involving compliance with the federal securities laws and regulations and the rules of the parties by the Common Member, or other documents in the possession of the party receiving the request relating to the Common Member as necessary to assist the other party in fulfilling the self-regulatory responsibilities, obligations, and functions allocated under this Agreement. The parties agree that a party will make available promptly to the requesting party witnesses as necessary to assist the other party in fulfilling the self-regulatory responsibilities allocated under this Agreement. The non-requesting party will pay all reasonable travel and other expenses incurred by its employees to the extent that the requesting party requires such employees to serve as a witness, and provide information or other assistance pursuant to this Agreement.

(c) *Customer Complaints.* If a party receives a copy of a customer complaint relating to a Common Member's activity or conduct that is not the regulatory responsibility of the receiving party, the receiving party will forward to the other party copies of such customer complaints.

(d) Upon reasonable request of a party, the other party shall use reasonable efforts to furnish the requesting party information on informal or formal disciplinary actions involving a Common Member. The requesting party will reimburse the

other party for reasonable expenses incurred for providing such information.

(e) *Information-Miscellaneous.* Where not otherwise provided, in consideration for NASD assuming any of the above referenced regulatory responsibilities and obligations of Nasdaq with respect to Common Members and thereafter providing information to Nasdaq in any form that is necessary or desirable to Nasdaq in order for Nasdaq to fulfill its regulatory obligations under the Act or in order for Nasdaq to remain informed of the actions of its members and associated persons, Nasdaq will reimburse NASD for all reasonable expenses incurred for providing such information.

7. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common Members as either party, in its sole discretion, shall deem appropriate or necessary.

8. *Fees.* NASD will provide Nasdaq with one hundred eighty (180) days advance written notice in the event that NASD decides to charge Nasdaq for any expenses incurred or services performed under this Agreement not otherwise set forth above. Nasdaq will have thirty (30) days from the date of such notification to inform NASD that Nasdaq will seek to terminate the Agreement pursuant to Section 17 thereof or enter into an agreement pursuant to applicable rules of the SEC with another SRO with respect to the performance of such responsibilities.

9. *Indemnification.* Neither party, including respective directors, governors, officers, employees and agents, will be liable to the other party and its directors, governors, officers, employees and agents for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except as otherwise provided for under the Act or in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentiality. Both parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either party to the other party with respect to any of the responsibilities to be performed by either of these parties hereunder.

10. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation

between the parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association; provided, however, that (a) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the parties agree upon another arbitration forum, (b) the foregoing shall not preclude either party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (c) the parties shall not submit claims for punitive damages, and do hereby waive any right to the same, and (d) the arbitrators shall not be authorized to award punitive damages.

11. *SEC Approval.*

(a) The parties agree to file promptly this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, Nasdaq will notify Common Members of the general terms of the Agreement and its impact on members. The notice will be sent on behalf of both parties and, prior to being sent, NASD will review and approve the notice.

13. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

14. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall (a) confer on any person other than the parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the parties hereto partners or participants in a joint venture, or (c) appoint one party the agent of the other.

15. *Assignment.* Neither party may assign the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning party without the prior written consent of the other party.

16. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such

jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

17. Termination.

(a) Termination for Cause. Either party may terminate the Agreement due to breach by the other party. The party aggrieved by the breach shall give written notice to the other party that the Agreement shall be terminated not earlier than sixty (60) calendar days from receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) Termination for Convenience. Either party may terminate the Agreement for any other reason by giving written notice to the other party that the Agreement will terminate not less than one hundred eighty (180) days from receipt of the notice. The notice will specify the basis for termination. Nasdaq will pay NASD the amount due for expenses incurred for generating reports and notices as of the effective date of termination.

18. General. The parties agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

19. Liaison and Notices. All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a) and (b), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) If to NASD: National Association of Securities Dealers, Inc. 1735 K Street, NW., Washington, DC 20006. Attn: NASD Regulation Office of General Counsel.

With, if a notice of breach or default, a required copy to: National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, DC 20006, Attn:

Office of General Counsel—Contracts Group.

(b) If to Nasdaq: The NASDAQ Stock Market LLC, 9600 Blackwell Avenue, Rockville, MD 20850, Attn: The Nasdaq Stock Market LLC, Office of General Counsel.

With, if a notice of breach or default, a required copy to: The Nasdaq Stock Market LLC, Office of General Counsel.

20. Regulatory Responsibility.

Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, NASD and Nasdaq jointly request the SEC, upon its approval of this Agreement, to relieve Nasdaq of any and all responsibilities with respect to the matters allocated to NASD pursuant to this Agreement for purposes of Sections 17(d) and 19(g) of the Act; provided, however, that Nasdaq will continue to have exclusive responsibility for ensuring the continued validity of the Nasdaq certifications made under Section 4 herein.

21. Governing Law. This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

22. Survival of Provisions. Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASD, the payment of the price by Nasdaq, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 9 and 10.

The Nasdaq Stock Market LLC Rules Certification for 17D-2 Agreement With NASD

The Nasdaq Stock Market LLC hereby certifies that the requirements contained in the Nasdaq Stock Market rules listed below are identical to, or substantially similar to, NASD rules.

0100. GENERAL PROVISIONS

0110. Adoptions and Application of Rules

0113. Interpretation

0115. Applicability

0120. Definitions

0121. Definitions in By-Laws

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

1002. Qualifications of Nasdaq Members and Associated Persons

IM-1002-1. Filing of Misleading Information as to Membership or

Registration

IM-1002-2. Status of Sole Proprietors and Registered Representatives

Serving in the Armed Forces

IM-1002-3. Failure to Register Personnel

IM-1002-4. Branch Offices and Offices of Supervisory Jurisdiction

1010. Membership Proceedings Definitions

1011. Definitions

1012. General Provisions

1013. New Member Application and Interview

1014. Department Decision

1017. Application for Approval of Change in Ownership, Control, or Business Operations

1020. Registration of Principals

1021. Registration Requirements

1022. Categories of Principal Registration

IM-1022-2. Limited Principal—General Securities Sales Supervisor

1030. Registration of Representatives

1031. Registration Requirements

1032. Categories of Representative Registration

1040. Registration of Assistant Representatives—Order Processing

1041. Registration Requirements

1042. Restrictions

1050. Research Analysts

1060. Persons Exempt from Registration

1070. Qualification Examinations and Waiver of Requirements

1080. Confidentiality of Examinations

1090. Foreign Members

1100. Foreign Associates

1120. Continuing Education

Requirements

1130. Reliance on Current

Membership List

1140. Electronic Filing Rules

1150. Executive Representative

2000. BUSINESS CONDUCT

2100. GENERAL STANDARDS

2110. Standards of Commercial Honor and Principles of Trade

IM-2110-2. Trading Ahead of

Customer Limit Orders

IM-2110-3. Front Running Policy

IM-2110-4. Trading Ahead of

Research Reports

IM-2110-5. Anti-Intimidation/

Coordination

IM-2110-6. Confirmation of Callable

Common Stock

IM-2110-7. Interfering With the

Transfer of Customer Accounts in

the Context of Employment

Disputes

2111. Trading Ahead of Customer

Market Orders

2120. Use of Manipulative, Deceptive

or Other Fraudulent Devices

2200. COMMUNICATIONS WITH

CUSTOMERS AND THE PUBLIC

2210. Communications with the Public
 IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading
 IM-2210-4. Limitations on Use of Nasdaq's Name
 2211. Institutional Sales Material and Correspondence
 2212. Telemarketing
 2240. Disclosure of Control Relationship with Issuer
 2250. Disclosure of Participation or Interest in Primary or Secondary Distribution
 2260. Forwarding of Proxy and Other Materials
 IM-2260. Suggested Rates of Reimbursement
 2270. Disclosure of Financial Condition to Customers
 2300. TRANSACTIONS WITH CUSTOMERS
 2310. Recommendations to Customers (Suitability)
 IM-2310-2. Fair Dealing with Customers
 IM-2310-3. Suitability Obligations to Institutional Customers
 2320. Best Execution and Interpositioning
 2330. Customers' Securities or Funds
 IM-2330. Segregation of Customers' Securities
 2340. Customer Account Statements
 2341. Margin Disclosure Statement
 2360. Approval Procedures for Day Trading Accounts
 2361. Day-Trading Risk Disclosure Statement
 2370. Borrowing From or Lending to Customers
 2400. COMMISSIONS, MARK-UPS AND CHARGES
 2430. Charges for Services Performed
 2460. Payments for Market Making
 2500. SPECIAL ACCOUNTS
 2510. Discretionary Accounts
 2520. Margin Requirements
 2800. SPECIAL PRODUCTS
 2810. Direct Participation Programs
 2830. Investment Company Securities
 2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants
 2841. General
 2842. Definitions
 2850. Position Limits
 2851. Exercise Limits
 2852. Reporting Requirements
 2853. Liquidation of Index Warrant Positions
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 11650. Transfer Fees
 11700. RECLAMATIONS AND REJECTIONS
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III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act⁹ and Rule 17d-2 thereunder,¹⁰ after May 8, 2006, the Commission may, by written notice, declare the plan submitted by Nasdaq and NASD, File No. 4-517, effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve Nasdaq of those responsibilities designated to NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/other.shtml>), or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-517 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number 4-517. This file number should be included on the subject line if e-mail

⁹ 15 U.S.C. 78q(d)(1).

¹⁰ 17 CFR 240.17d-2.

is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 the plan also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-517 and should be submitted on or before May 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
 Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53623; File No. 4-514]

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for The NASDAQ Stock Market LLC

April 10, 2006.

On February 22, 2006, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed minor rule violation plan (“MRVP”) pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on March 16, 2006.³ The Commission received no comments on the proposal. This order approves Nasdaq’s proposed MRVP.

¹¹ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 53428 (March 7, 2006), 71 FR 13645.