

**Name and Address:**

The Trade Reporting Facility LLC  
1 Liberty Plaza  
New York, NY 10006

**Details of organization:**

The Nasdaq Stock Market, Inc. and National Association of Securities Dealers, Inc. ("NASD") have proposed to establish The Trade Reporting Facility LLC as a limited liability company organized under the Delaware Limited Liability Company Act. The Trade Reporting Facility LLC would be established prior to the time of registration of The NASDAQ Stock Market LLC as a national securities exchange. The entity may be established with a name other than The Trade Reporting Facility, in which case the Form 1 will be amended to reflect the entity's actual name.

**Affiliation:**

Nasdaq, Inc. and NASD will be the sole members of The Trade Reporting Facility LLC.

**Business or functions:**

The Trade Reporting Facility LLC will operate a facility for Non-System Trading and engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient, or appropriate in connection therewith as Nasdaq, Inc. and NASD may determine. "Non-System Trading" means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to SEC Rule 240.11Aa3-1 or SEC Rule 242.601. The Trade Reporting Facility will be operated as a facility of NASD.

**Proposed Certificate of Formation:**

Attached as Exhibit A.

**Proposed Limited Liability Company Agreement:**

Attached as Exhibit B.

**Officers, Directors, and Standing Committee Members**

To be determined at the time of the establishment of the entity.

A

**CERTIFICATE OF FORMATION**

**OF**

**[THE TRADE REPORTING FACILITY LLC]**

This Certificate of Formation of [The Trade Reporting Facility LLC] (the "Company"), dated as \_\_\_\_\_, 2005, is being duly executed and filed by \_\_\_\_\_, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is [The Trade Reporting Facility LLC].

SECOND. The address of the registered office of the Company in the State of Delaware is [ADDRESS TO COME].

THIRD. The name and address of the registered agent for service of process on the Company in the State of Delaware is [ADDRESS TO COME].

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

\_\_\_\_\_  
NAME:

Authorized Person

B

**EXHIBIT 3**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**[THE TRADE REPORTING FACILITY LLC]**

This Limited Liability Company Agreement (together with the schedules attached hereto, this "Agreement") of [The Trade Reporting Facility LLC] (the "Company"), dated as of [\_\_\_\_], 2005, is entered into by and between The Nasdaq Stock Market, Inc. (the "Business Member") and the National Association of Securities Dealers, Inc. (the "SRO Member" or "NASD" and, together with the Business Member, the "Members", and each, a "Member"). Capitalized terms used herein and not otherwise defined have the meanings set forth on Schedule A hereto.

The Members, by execution of this Agreement, (i) hereby form and continue the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the "Act"), and (ii) hereby agree as follows:

1. Name.

The name of the limited liability company formed hereby is [The Trade Reporting Facility LLC].

2. Principal Business Office.

The principal business office of the Company shall be located at such location as may hereafter be determined by the Members.

3. Registered Office.

The address of the registered office of the Company in the State of Delaware is [ADDRESS TO COME].

4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is [ADDRESS TO COME].

5. Members.

The name and the mailing address of the Members are set forth on Schedule B, attached hereto.

6. Certificates.

[NAME TO COME] as an “authorized person” within the meaning of the Act, shall execute, deliver and file the Certificate of Formation with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an “authorized person” shall cease, and each Member thereupon shall become a designated “authorized person” and each Member shall continue as a designated “authorized person” within the meaning of the Act. The Members or an Officer shall execute, deliver and file any other certificates (and any amendments thereto and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, to operate a facility for Non-System Trading and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient or appropriate in connection therewith as the Members may determine. The Company may not undertake material business activities unrelated to the business of Non-System Trading without obtaining the approval required by Section 10(e).

8. Powers.

The Company (a) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (b) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

9. Roles of Members.

(a) *SRO Member.* The SRO Member shall have the sole regulatory responsibility for the activities of the Company. Pursuant to the Statement of Work, the SRO Member shall perform for the Company SRO Responsibilities including, but not limited to, those relating to:

- (i) adoption, amendment and interpretation of policies arising out of and regarding:
  - (A) any material aspect of the operation of the facilities of the SRO;
  - (B) any statement made generally available to membership of, to all participants in, or to Persons having or seeking access to facilities of the SRO, or to a group or category of specified Persons, that establishes or changes any standard, limit, or guideline with respect to (1) the rights, obligations, or privileges of specified Persons or, Persons associated with specific Persons, or (2) the meaning, administration, or enforcement of an existing rule of the SRO, including any generally applicable exemption from such a rule;
- (ii) approval of rule filings of the SRO prior to filing with the SEC;

(iii) regulation of the Company's activities, including the right to review and approve the regulatory budget for the Company;

(iv) securities regulation and any other matter implicating SRO Responsibilities; and

(v) real-time market surveillance (Nasdaq Marketwatch);

(b) *Business Member.* The Business Member shall be primarily responsible for the management of the Company's business affairs. Pursuant to the Facility Services Agreement, the Business Member shall provide those services relating to:

(i) matters regarding business policy;

(ii) approval of business decisions, including budgets, capital expenditures, technology changes, marketing and product changes;

(iii) identification and creation of officer positions necessary to manage the Company pursuant to Section 11 hereof and appointment or termination of the officers of the Company;

(iv) management and control of day-to-day operations, including business management, technology operations and enhancements, accounting, finance, human resources, pricing recommendations and market operations;

(v) incurrence, issuance, assumption, guarantee or refinancing of any debt of the Company;

(vi) acquisition of assets consistent with the purpose set forth in Section 7;

(vii) engaging or terminating an independent auditor;

(viii) declaration and payment of any distributions;

(ix) commencement or settlement of litigation not directly related to the SRO Responsibilities;

(x) internal audits, including Sarbanes-Oxley 404 compliance efforts and business risk review; and

(xi) other operations of the Company.

(c) *Consultation with Business Member.* Notwithstanding anything to the contrary contained in this Section 9 or elsewhere in this Agreement, the SRO Member shall endeavor to carry out its material regulatory obligations, pursuant to Section 9(a), in consultation with the Business Member. Such consultation shall, to the extent reasonably practicable, include providing the Business Member with the opportunity to review and comment upon in advance nonroutine information relating to the Company that appears in filings, statements or

applications submitted to the SEC or another governmental or regulatory authority on behalf of the Company that are material to ensuring that the Company complies with applicable federal securities laws and keeping the Company and the Business Member apprised, in a regular and timely manner, of nonroutine notices or orders relating to the Company received by the SRO Member from the SEC or another governmental or regulatory authority. Nothing in this Section 9(c) shall be construed to allow the Business Member to require the SRO Member to act or fail to act in a manner that the SRO Member believes to be inconsistent with its regulatory obligations.

(d) *Compliance with Securities Laws.* Each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC pursuant to its regulatory authority and the provisions of this Agreement.

(e) *Other Facilities.* The SRO Member covenants and agrees if it enters into an agreement with another party regarding a facility for Non-System Trading the terms and conditions shall be no more favorable to such other party than the terms and conditions of this Agreement.

10. Board of Directors.

(a) *Number and Composition.* The Company shall be managed by or under the direction of the board of directors (the "Board of Directors" or "Board"), which shall be established by the Members. The Board shall initially be comprised of three (3) Directors. The Business Member shall be initially entitled to designate two (2) Directors, each of whom must be a director, officer or employee of the Business Member. The SRO Member shall be initially entitled to designate one (1) Director (the "SRO Member Director") who shall be a member of the SRO Member's Board of Governors or an officer or employee of the SRO Member designated by the SRO Member's Board of Governors. Each Director elected, designated or appointed to the Board shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation or removal. Each Director shall execute and deliver a Management Agreement or other instrument pursuant to which such Director shall accept its appointment and duties as a Director and agree to be bound by the terms of this Agreement. Subject to Section 10(e) of this Agreement, the Board may change the number of the Directors and the composition of the Board from time to time at its discretion; provided, however, that the Board shall, at all times, include at least one SRO Member Director. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be a Director.

(b) *Authority and Conduct.* The Board shall have the authority to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 10(e), the Board shall have the authority to bind the Company. Each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the SRO Member pursuant to their regulatory authority and the provisions of this Agreement. Furthermore, in discharging his or her responsibilities as a member of the Board, each Director shall take into consideration whether his or her actions as a Director would cause the Company



or either Member to engage in conduct that would be consistent with the purposes of the Exchange Act.

(c) *Meetings.* The Board may hold meetings, both regular and special, within or outside the State of Delaware. Regular or special meetings of the Board may be held at such time and at such place as shall from time to time be determined by the Board. Regular meetings of the Board may be held without notice. The President or other Officer of the Company as designated by the Board may call special meetings of the Board on not less than one day's notice to each Director of the Board by telephone, facsimile, mail, telegram or any other means of communication, and special meetings of the Board shall be called by the President or other Officer of the Company as designated by the Board in like manner and with like notice upon the written request of any one or more of the Directors of the Board.

(d) *Quorum; Acts of the Board.* At all meetings of the Board, a majority of the Directors of the Board shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors of the Board present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors of the Board present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. Notwithstanding the foregoing, any act of the Board shall be subject to the limitations set forth in Section 10(e).

(e) *Special Voting Requirements; Major Actions.* Notwithstanding the provisions set forth in Section 10(d) regarding voting requirements, no action with respect to any Major Action (as defined below), shall be effective unless approved by consent of the SRO Member Director. Additionally, unless approved by the SRO Member Director, neither Member on behalf of the Company shall enter into or permit the Company to enter into any Major Action. For purposes of this Agreement, "Major Action" means any of the following:

- (i) approving pricing decisions that are subject to the SEC filing process;
- (ii) approving contracts between the Company and the Business Member, any of its Affiliates, directors, officers or employees;
- (iii) approving Director compensation;
- (iv) selling, licensing, leasing or otherwise transferring material assets used in the operation of the Company's business outside of the ordinary course of business with an aggregate value in excess of \$3 million;
- (v) approving or undertaking a merger, consolidation or reorganization of the Company with any other entity;

(vi) entering into any partnership, joint venture or other similar joint business undertaking;

(vii) making any fundamental change in the market structure of the Company from that contemplated by the Members as of the date hereof;

(viii) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 20;

(ix) conversion of the Company from a Delaware limited liability company into any other type of entity;

(x) expansion of or modification to the business which results in the Company engaging in material business unrelated to the business of Non-System Trading;

(xi) changing the number of Directors on or composition of the Board; and

(xii) adopting or amending policies regarding access and credit matters affecting the Company.

(f) *Electronic Communications.* Directors on the Board, or any committee of the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(g) *Committees of Directors.* The Board may, by resolution passed by the unanimous vote of the Board, designate one or more committees thereof, each committee to consist of one or more of the Directors. The Board may designate one or more Directors as alternate members of any committee thereof, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board designating such committee, shall have and may exercise all the powers and authority of the Board in the management of the affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. Notwithstanding the foregoing, committees of the Board shall not have any power or authority to approve or transact any Major Action.

(h) *Compensation of Directors; Expenses.* Subject to Section 10(e) hereof, the Board shall have the authority to fix the compensation of the Company's Directors. The Directors may be paid their expenses, if any, associated with attendance at Board meetings,

which may be a fixed sum for attendance at each such meeting or a stated Director salary. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) *Removal of Directors.* Unless otherwise restricted by law and notwithstanding any other provision of this Agreement, any Director may be removed, with or without cause, by the Member that had appointed such Director, and any vacancy caused by any such removal may be filled by action of such Member.

(j) *Directors as Agents.* To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Except as provided in this Agreement or pursuant to an authorization from the Board, an individual Director may not bind the Company.

(k) *Duties of Directors.* Except as provided in this Agreement, in exercising their rights and performing their duties under this Agreement, the Directors shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware.

#### 11. Officers.

The Officers of the Company shall be appointed by the Business Member and approved by a majority of the Board and shall consist of at least a President, Secretary and Treasurer. In addition, the Business Member may appoint subject to the Board's approval one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person. Any Officer or Director of the Company may also serve as an officer or director of the Business Member or the SRO Member. The Business Member may appoint subject to the Board's approval such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company appointed by the Business Member subject to the Board's approval shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Business Member subject to the Board's approval. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be an Officer.

(a) *President.* The President shall be the chief executive officer of the Company, shall preside at all meetings of the Members, if any, and of the Board, shall be responsible for the general and active management of the business of the Company and shall see that all orders and resolutions of the Company's Board are carried into effect. The President shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed; (ii) where signing and execution

thereof shall be expressly delegated by the Company's Directors to some other Officer or agent of the Company; and (iii) as otherwise permitted in Section 11(b).

(b) *Vice President.* In the absence of the President or in the event of the President's inability to act, the Vice President, if any (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Directors, or in the absence of any designation, then in the order of their election), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents, if any, shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(c) *Secretary and Assistant Secretary.* The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and all meetings of the Members, if any, and record all the proceedings of the meetings of the Board and the Members in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the Members, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, or if there be more than one, in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) *Treasurer and Assistant Treasurer.* The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and to the Board, at their regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial condition of the Company. The Assistant Treasurer, or if there shall be more than one, in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and, the actions of the Officers taken in accordance with such powers shall bind the Company.

(f) *Duties of Officers.* Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company and neither the SRO Member, Business Member nor any Director of the Company shall be obligated personally for any debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company. Notwithstanding the foregoing, the Business Member shall ensure that the Company has funds sufficient to satisfy its regulatory obligations and shall guaranty the Company's payment obligations relating to the costs associated with those SRO Responsibilities performed for the Company pursuant to the Statement of Work.

13. Capital Contributions.

The Business Member shall contribute the property, rights and other assets and liabilities to the Company listed on Schedule B attached hereto. The SRO Member shall not make any capital contribution to the Company and shall have no claim to any assets, tangible or intangible, of the Company.

14. Additional Contributions.

The Members are not required to make any additional capital contributions to the Company. However, the Business Member may make additional capital contributions to the Company at any time upon the written consent of such Member. To the extent that the Business Member makes an additional capital contribution to the Company, the Business Member shall revise Schedule B of this Agreement. The SRO Member may not make and shall not be required to make any capital contribution to the Company. The provisions of this Agreement, including this Section 14, are intended solely to benefit the Members and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and no Member shall have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Business Member.

16. Distributions.

Distributions shall be made to the Business Member at the times and in the aggregate amounts determined by the Business Member. Distributions shall not be made to the SRO Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

17. Books, Records and Jurisdiction.

(a) The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board in compliance with Section 17(a)(1) of the Exchange Act and the rules thereunder. Each Member and its duly authorized representatives and the SEC shall have the right to examine the Company books, records and documents during normal business hours. At the request of the SEC, the Company shall provide to the SEC copies of the Company books and the costs associated with such copies shall be borne by the Company. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from any Member information that the Board would otherwise be permitted to keep confidential from any Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Business Member. The Company's independent auditor shall be an independent public accounting firm selected by the Business Member.

(b) The Members acknowledge that to the extent directly related to the Company's activities, the books, records, premises, officers, directors, governors, agents and employees of the Members shall be deemed to be the books, records, premises, officers, directors, governors, agents and employees of NASD and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act.

(c) The Members and the officers, directors, governors, agents and employees of the Members irrevocably submit to the jurisdiction of the U.S. federal courts, SEC and NASD for the purpose of any suit, action or proceeding pursuant to U.S. federal securities laws, and the rules or regulations thereunder, arising from, or relating to, the Company's activities or Section 17(b) hereof (except that such jurisdictions shall include Delaware for any such matter relating to the organization or internal affairs of the Company, provided that such matter is not related to trading on, or the regulation of, the market operated by the Company), and hereby waive and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action or proceeding any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

(d) During the term of this Agreement, none of the Company, any Member or their respective Affiliates shall reveal to any Person any confidential or proprietary information or trade secrets of the Company or any of the Members or their respective Affiliates ("Confidential Information"); provided, however, that such Confidential Information may be disclosed (i) to any employee and subcontractor involved in the performance of this Agreement, (ii) to any Person who is a director, officer, employee of, or counsel or advisor to, the Company or any of the Members or any of their respective Affiliates, (iii) to any person who is an official or employee of, or counsel to, any regulatory body or agency having jurisdiction over the Company or its Affiliates, (iv) for the purpose of furthering the aims and interests of the Company as determined by its Board, or (v) pursuant to a subpoena or order issued by a court of competent jurisdiction or as otherwise required by law. The obligations of this Section 17(d) shall survive for a period of five years from termination of this Agreement.

(e) The Company and each Member shall cause its respective Affiliates, officers, directors, governors, employees, representatives and agents to comply with this Section 17.

18. Exculpation and Indemnification.

(a) To the fullest extent permitted by law, no Member, Officer, Director, employee or agent of the Company and no officer, director, governor, employee, representative, agent or Affiliate of any Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 shall be provided out of and to the extent of Company assets only, and no Member shall have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 18.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to any Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person bound by this Agreement for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or

any other Covered Person. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(f) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

19. Assignment.

Neither Member may transfer or assign in whole or in part its limited liability company interest in the Company except (i) in the case of either Member, to an Affiliate of such Member, provided in the case of the SRO Member, that the Affiliate has proper authority to perform the SRO Responsibilities of the SRO Member.

20. Termination.

(a) Unless otherwise agreed in writing by the Members, the Company may be dissolved by either Member in accordance with this Section 20. Either Member may dissolve the Company by providing to the other Member prior written notice of at least one year, unless the Member revokes such notice prior to the expiration of the one-year period; provided, however, that neither Member may deliver such notice of dissolution to the other Member before the second anniversary of the effective date of this Agreement. Unless the notice is revoked prior to the date of dissolution or as otherwise agreed to by the Members, the Company shall dissolve in accordance with the terms of this Agreement one year from the date notice of such dissolution is received by the applicable Member or at such later time as expressly set forth in the notice (the "Dissolution Date"). If the SRO Member provides notice of dissolution pursuant to this Section 20 (the date of delivery by the SRO Member of such notice of dissolution is hereinafter referred to as the "Notice of Dissolution Delivery Date"), then the Members shall negotiate in good faith to: (i) allow the Business Member to continue to operate the Company or the business of the Company under the SRO Member's SRO registration, (ii) restructure the Company so that the Business Member can operate the Company or the business of the Company under the Business Member's SRO registration or (iii) sell the Company or the business of the Company to the SRO Member based on a valuation of the Company's business and assets conducted in such manner as the parties may agree, and consideration for the sale may include a contract for the Business Member to provide services to the SRO Member relating to the operation of the Company and the business of the Company.

(b) In the event the parties have not agreed on any of (i), (ii) or (iii) of Section 20(a) by the date that is 60 days after the Notice of Dissolution Delivery Date (the "FMV Commencement Date"), the Members shall thereafter in good faith seek to agree on the Fair Market Value. If the Members cannot agree on the Fair Market Value within [30] days after the FMV Commencement Date, the Members shall cooperate in good faith to select an independent investment banking firm (an "Investment Bank") of recognized international standing (the "Appraiser") to determine the Fair Market Value. Any Investment Bank that has received an aggregate of [\$100,000] or more for services or otherwise from either Member during the three-year period prior to the Dissolution Date shall not be eligible to serve as the Appraiser. The fees and expenses of the Appraiser will be borne by the Members in equal amounts. Each Member



will share with the other Member any written information it provides to the Appraiser and will not communicate with the Appraiser, other than through such written information, without giving the other Member an opportunity to be present at any such communication. Within [90] days after the date on which the date the Appraiser has been selected, the Appraiser will determine the Fair Market Value and will notify the Members in writing of such determination (specifying the Fair Market Value and setting forth, in reasonable detail, the basis for such determination). The determination of Fair Market Value in accordance with this Section 20(b) will be final, binding and conclusive upon the Members. At a closing to occur on the date that is [10] business days following the determination of the Fair Market Value (whether by agreement of the Members or by determination of the Appraiser), or such other date as the Members shall mutually determine: (i) the SRO Member shall pay to the Business Member an amount equal to the Fair Market Value; (ii) the Business Member shall transfer to the SRO Member the Business Member's interest in the Company in its entirety; and (iii) the Notice of Dissolution shall be deemed revoked. Upon dissolution of the Company, except as may be prohibited by applicable law, the Business Member covenants and agrees that it will not apply to register as a Registered Securities Association. This covenant shall survive termination of this Agreement for a period of five years.

21. Dissolution and Winding Up.

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) an action by either Member in accordance with and pursuant to Section 20 herein, (ii) the occurrence of any event which terminates the continued membership of the last remaining Member in the Company unless the Company is continued in a manner permitted by the Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) The bankruptcy (as defined in Section 18-101(1) of the Act) of any Member shall not cause such Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) In the event of dissolution, the Business Member shall be responsible for the winding up of the Company and the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(d) The Company and, except as otherwise provided herein, this Agreement shall each terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Business Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

22. Waiver of Partition.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, the SRO Member hereby irrevocably waives any right or power that such

Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company.

23. Related Party Transactions.

Subject to Section 10(e) hereof, the Company may enter into transactions with its Members.

24. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

25. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

26. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

27. Amendments.

This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by both Members.

28. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

29. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail, or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address determined pursuant to Section 2, (b) in the case of a Member, to such Member at its address as listed on Schedule B attached hereto and (c) in the

case of either of the foregoing, at such other address as may be designated by written notice to the other party.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written herein.

THE NASDAQ STOCK MARKET, INC.

By: \_\_\_\_\_

Name:

Title:

NATIONAL ASSOCIATION OF SECURITIES  
DEALERS, INC.

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A**

Definitions

**A. Definitions**

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented from time to time.

“Appraiser” has the meaning set forth in Section 20(b) of this Agreement.

“Board” or “Board of Directors” has the meaning set forth in Section 10(a).

“Business Member” means The Nasdaq Stock Market, Inc., in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company as such pursuant to this Agreement.

“Certificate of Formation” means the Certificate of Formation of the Company to be filed with the Secretary of State of the State of Delaware on [\_\_\_\_\_], 200[ ], as amended or amended and restated from time to time.

“Confidential Information” has the meaning set forth in Section 17(d) of this Agreement.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 18(a) of this Agreement.

“Directors” means the directors elected, designated or appointed to the Board from time to time by the Members. A Director is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

“Dissolution Date” has the meaning set forth in Section 20(a) of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Facility Services Agreement” means the Facility Services Agreement to be entered into between the Company and the Business Member or an Affiliate thereof, as such agreement may from time to time be amended.

“Fair Market Value” means the private market value that a willing Third Party would pay for the Business Member’s interest in the Company in an arms-length transaction taking into account the prospects and potential of the Company’s business operated as a going concern under a valid SRO registration.

“FMV Commencement Date” has the meaning set forth in Section 20(b) of this Agreement.

“Investment Bank” has the meaning set forth in Section 20(b) of this Agreement.

“Major Action” has the meaning set forth in Section 10(e) of this Agreement.

“Management Agreement” means the agreement of the Directors in substantially the form attached hereto as Schedule C.

“Member” has the meaning set forth in the preamble to this Agreement.

“NASD” has the meaning set forth in the preamble to this Agreement.

“Non-System Trading” means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to SEC Rule 240.11Aa3-1 or SEC Rule 242.601

“Notice of Dissolution Delivery Date” has the meaning set forth in Section 20(a) of this Agreement.

“Officer” means an officer of the Company described in Section 11. [The initial Officers are listed on Schedule D hereto].

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Registered Securities Association” means a “registered securities association” within the meaning of the Exchange Act.

“SEC” means the Securities and Exchange Commission.

“SRO” means a “self-regulatory organization” within the meaning of the Exchange Act.

“SRO Member” means the National Association of Securities Dealers, Inc, in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company pursuant to this Agreement.

“SRO Member Director” has the meaning set forth in Section 10(a) of this Agreement.

“SRO Responsibilities” means those duties or responsibilities of an SRO pursuant to the Exchange Act and the rules promulgated thereunder.

“Statement of Work” means the written statement to be delivered to the Company by the NASD or an Affiliate thereof setting forth the SRO Responsibilities that the NASD or an Affiliate thereof will perform for the Company.

“Third Party” means any person other than (i) the Company or any Affiliate thereof or (ii) either Member or any Affiliate thereof.

**B. Rules of Construction**

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

**SCHEDULE B**

Members

<u>Name</u>	<u>Mailing Address</u>	<u>Capital Contribution</u>
The Nasdaq Stock Market, Inc.	One Liberty Plaza New York, NY 10006	[TO COME]
National Association of Securities Dealers, Inc.	1735 K Street, N.W. Washington D.C. 20006	None



**SCHEDULE C**

**Management Agreement**

[\_\_\_\_\_], 2005

[The Trade Reporting Facility LLC]  
[ADDRESS]

Re: Management Agreement  
[The Trade Reporting Facility LLC]

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned persons, who have been designated as directors of the Board of [The Trade Reporting Facility LLC], a Delaware limited liability company (the "Company"), in accordance with the Limited Liability Company Agreement of the Company, dated as of [\_\_\_\_\_], 200[ ], as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. Each of the undersigned accepts such person's rights and authority as a Director (as defined in the LLC Agreement) of the Board of the Company under the LLC Agreement and agrees to perform and discharge such person's duties and obligations as a Director of such Board under the LLC Agreement, and further agrees that such rights, authorities, duties and obligations under the LLC Agreement shall continue until such person's successor as a Director is designated or until such person's resignation or removal as a Director in accordance with the LLC Agreement. Each of the undersigned agrees and acknowledges that it has been designated as a "manager" of the Company within the meaning of the Delaware Limited Liability Company Act.

2. THIS MANAGEMENT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**SCHEDULE D**

Initial Officers of [The Trade Reporting Facility LLC]

Name

Title

[President]

[Vice President]

[Secretary]

[Treasurer]