

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 122 Amendment No. (req. for Amendments *)
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Proposed Rule Change by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>		
			Rule					
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input checked="" type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).
A proposed rule change to amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * John Last Name * Yetter
Title * Vice President
E-mail * john.yetter@nasdaqomx.com
Telephone * (301) 978-8497 Fax (301) 978-8472

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 10/22/2012
By Edward S. Knight Executive Vice President and General Counsel
(Name *) (Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority (“FINRA”). The text of the proposed rule change is attached as Exhibit 5.

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of NASDAQ pursuant to general authority delegated by the Board of Directors of NASDAQ on July 10, 2012. NASDAQ staff will advise the Board of Directors of NASDAQ of any action taken pursuant to delegated authority. No other action by NASDAQ is necessary for the filing of the rule change.

NASDAQ will implement the proposed rule change thirty days after the date of the filing. Questions regarding this rule filing may be directed to John M. Yetter, Vice President and Deputy General Counsel, The NASDAQ OMX Group, at (301) 978-8497.

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

a. Purpose

Many of NASDAQ’s rules governing member conduct are based on rules of FINRA (formerly the National Association of Securities Dealers (“NASD”)). During

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2008, FINRA embarked on an extended process of moving rules formerly designated as “NASD Rules” into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them.

Accordingly, NASDAQ has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix “A”. For example, the NASDAQ rule paralleling FINRA Rule 2090 will be designated as Rule 2090A. This filing makes the following changes:

(1) NASDAQ is adopting Rule 5310A, which incorporates FINRA Rule 5310 (Best Execution and Interpositioning) by reference. The new rule takes the place of Rule 2320 (Best Execution and Interpositioning) and IM-2320 (Interpretive Guidance with Respect to Best Execution Requirements).³ References in FINRA Rule 5310 to NASD Rule 2440 and IM-2440 will not be reflected in NASDAQ’s rule, since NASDAQ has not adopted corresponding rules regulating the activities of NASDAQ Members with respect to commissions and mark-ups.

(2) NASDAQ is redesignating Rule 3060 (Influencing or Rewarding Employees of Others) as Rule 3220A and changing the incorporated rule from NASD

³ See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (SR-FINRA-2011-052). NASDAQ Rule 2320 and IM-2320 had not previously incorporated NASD or FINRA rules by reference, but had closely tracked the language of the analogous NASD rules in effect at the time of their adoption. By incorporating FINRA Rule 5310 by reference, NASDAQ will be incorporating changes made by FINRA in the interim, primarily reflected in the Supplementary Material to FINRA Rule 5310. The changes reflect guidance with respect to the standards for compliance with the rule.

Rule 3060 to FINRA Rule 3220.⁴

(3) NASDAQ is redesignating Rule 3090 (Transactions Involving Nasdaq Employees) as Rule 2070A.⁵

(4) NASDAQ is replacing Rule 2310 (Recommendations to Customers (Suitability)), IM-2310-1 (Reserved), IM-2310-2 (Fair Dealing with Customers), and IM-2310-3 (Suitability Obligations to Institutional Customers) with Rule 2111A (Suitability), which incorporates FINRA Rule 2111, and Rule 2090A (Know Your Customer), which incorporates FINRA Rule 2090.⁶ However, references in FINRA Rule 2111 to NASD IM-2210-6 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted a corresponding rule regulating the activities of NASDAQ Members in connection with investment analysis tools.

NASDAQ notes that in some instances, the amended rules reference rules that are being adopted or renumbered by contemporaneous NASDAQ rule filings that have been filed on an immediately effective basis.⁷

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ in

⁴ See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027).

⁵ Id.

⁶ See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR-FINRA-2010-039).

⁷ See SR-NASDAQ-2012-123 (October 22, 2012); SR-NASDAQ-2012-124 (October 22, 2012).

⁸ 15 U.S.C. 78f.

particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

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

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

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder,¹¹ in that the proposed rule

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASDAQ provided such notice on October 9, 2012.

In its guidance on the proposed rules of Self-Regulatory Organizations (“SROs”),¹² the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that “a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO’s rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”¹³ The Exchange notes that the change is substantially similar in all material respects to changes by FINRA approved by the Commission in the filings cited above.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

¹³ Id. at 40149.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is substantially similar in all material respects to the rule changes approved by the Commission in the FINRA filings cited above.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal

Register

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2012-122)

October __, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend and Adopt Several NASDAQ Rules to Reflect Changes to Rules of the Financial Industry Regulatory Authority (“FINRA”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 22, 2012, The NASDAQ Stock Market LLC (“Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority (“FINRA”). NASDAQ will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Many of NASDAQ's rules governing member conduct are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix "A". For example, the NASDAQ rule paralleling FINRA Rule 2090 will be designated as Rule 2090A. This filing makes the following changes:

(1) NASDAQ is adopting Rule 5310A, which incorporates FINRA Rule 5310 (Best Execution and Interpositioning) by reference. The new rule takes the place of Rule 2320 (Best Execution and Interpositioning) and IM-2320 (Interpretive Guidance with

Respect to Best Execution Requirements).³ References in FINRA Rule 5310 to NASD Rule 2440 and IM-2440 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted corresponding rules regulating the activities of NASDAQ Members with respect to commissions and mark-ups.

(2) NASDAQ is redesignating Rule 3060 (Influencing or Rewarding Employees of Others) as Rule 3220A and changing the incorporated rule from NASD Rule 3060 to FINRA Rule 3220.⁴

(3) NASDAQ is redesignating Rule 3090 (Transactions Involving Nasdaq Employees) as Rule 2070A.⁵

(4) NASDAQ is replacing Rule 2310 (Recommendations to Customers (Suitability)), IM-2310-1 (Reserved), IM-2310-2 (Fair Dealing with Customers), and IM-2310-3 (Suitability Obligations to Institutional Customers) with Rule 2111A (Suitability), which incorporates FINRA Rule 2111, and Rule 2090A (Know Your Customer), which incorporates FINRA Rule 2090.⁶ However, references in FINRA Rule 2111 to NASD

³ See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (SR-FINRA-2011-052). NASDAQ Rule 2320 and IM-2320 had not previously incorporated NASD or FINRA rules by reference, but had closely tracked the language of the analogous NASD rules in effect at the time of their adoption. By incorporating FINRA Rule 5310 by reference, NASDAQ will be incorporating changes made by FINRA in the interim, primarily reflected in the Supplementary Material to FINRA Rule 5310. The changes reflect guidance with respect to the standards for compliance with the rule.

⁴ See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027).

⁵ Id.

⁶ See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR-FINRA-2010-039).

IM-2210-6 will not be reflected in NASDAQ's rule, since NASDAQ has not adopted a corresponding rule regulating the activities of NASDAQ Members in connection with investment analysis tools.

NASDAQ notes that in some instances, the amended rules reference rules that are being adopted or renumbered by contemporaneous NASDAQ rule filings that have been filed on an immediately effective basis.⁷

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

⁷ See SR-NASDAQ-2012-123 (October 22, 2012); SR-NASDAQ-2012-124 (October 22, 2012).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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

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

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

Written comments were neither solicited nor received.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder,¹¹ in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-122 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-122. This file number should be included on the subject line if e-mail 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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 SR-NASDAQ-2012-122, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

2090A. Know Your Customer

Nasdaq members shall comply with FINRA Rule 2090 as if such rule were part of Nasdaq's rules.

* * * * *

[2310] 2111A. [Recommendations to Customers (]Suitability[)]

(a) Nasdaq members and associated persons of a member shall comply with [NASD Rule 2310] FINRA Rule 2111 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule[,];

(1) References to Rules 2111 and 4512 [3110] shall be construed as references to Nasdaq Rules 2111A and 4512A, respectively [3110];

(2) References to "FINRA's rules" shall be construed as references to "Nasdaq Rules"; and

(3) References to IM-2210-6 shall be disregarded, and no comparable Nasdaq Rule shall apply to activities of Nasdaq Members in connection with investment analysis tools.

[IM-2310-1. Reserved]**[IM-2310-2. Fair Dealing with Customers**

(a) Nasdaq members and associated persons of a member shall comply with NASD Interpretive Material 2310-2 (Except NASD IM-2310-2(e)(1) and (2)) as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to "the Association's Rules" or "Association Rules" shall be construed as references to "the Nasdaq Rules",

(2) References to interpretations and actions of NASD District Business Conduct Committees and the NASD Board of Governors shall be construed to reflect the policy of Nasdaq with respect to the application of Rule 2310, and

(3) References to the "Association" shall be construed as references to "Nasdaq".]

[IM-2310-3. Suitability Obligations to Institutional Customers

(a) Nasdaq members and associated persons of a member shall comply with NASD Interpretive Material 2310-3 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to the "Association" shall be construed as references to "Nasdaq".]

* * * * *

[2320] 5310A. Best Execution and Interpositioning

(a) Nasdaq Members shall comply with FINRA Rule 5310 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to NASD Rule 2440 and IM-2440 shall be disregarded;

(2) References to FINRA members shall be construed as references to Nasdaq members; and

(3) References to FINRA shall be construed as references to Nasdaq.

[In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used "reasonable diligence" are:

(1) The character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications;

(2) the size and type of transaction;

(3) The number of primary markets checked;

(4) Accessibility of the quotation; and

(5) The terms and conditions of the order which result in the transactions, as communicated to the member and persons associated with the member.

(b) In any transaction for or with a customer, no member or person associated with a member shall interject a third party between the member and the best available market except in cases where the member can demonstrate that to his or her knowledge at the time of the transaction the total cost or proceeds of the transaction, as confirmed to the member acting for or with the customer, was better than the prevailing market for the security. A member's obligations to his or

her customer are generally not fulfilled when he or she channels transactions through another broker/dealer or some person in a similar position, unless he or she can show that by so doing he or she reduced the costs of the transactions to the customer.

(c) When a member cannot execute directly with a market maker but must employ a broker's broker or some other means in order to insure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the retail firm. Examples of acceptable circumstances are where a customer's order is "crossed" with another retail firm which has a corresponding order on the other side, or where the identity of the retail firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

(d) Failure to maintain or adequately staff an order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of his or her obligations. However, the channeling of customers' orders through a broker's broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member acting as agent for the customer, such as where the third party gives up the name of the retail firm, are not prohibited if the cost of such service is not borne by the customer.

(e) A member through whom a retail order is channeled, as described above, and who knowingly is a party to an arrangement whereby the initiating member has not fulfilled his or her obligations under this Rule, will also be deemed to have violated this Rule.

(f) The obligations described in paragraphs (a) through (e) above exist not only where the member acts as agent for the account of his or her customer but also where retail transactions are executed as principal and contemporaneously offset.]

[IM-2320. Interpretive Guidance with Respect to Best Execution Requirements

Rule 2320(a) requires, among other things, that a member or person associated with a member comply with Rule 2320(a) when customer orders are routed to it from another broker/dealer for execution. This Interpretive Material addresses certain interpretive questions concerning the applicability of the best execution rule.

For the purposes of Rule 2320, the term "market" or "markets" is to be construed broadly and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker/dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker/dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm's best execution obligations.

A member's duty to provide best execution in any transaction "for or with a customer of another broker/dealer" does not apply in instances when another broker/dealer is simply executing a customer order against the member's quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker/dealers arises only when an order is routed from the broker/dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker/dealer against the member's quote, as opposed to those circumstances in which the member is accepting order flow from another broker/dealer for the purpose of facilitating the handling and execution of such orders.]

* * * * *

[3060] 3220A. Influencing or Rewarding Employees of Others

Nasdaq Members and persons associated with a member shall comply with [NASD Rule 3060] FINRA Rule 3220 as if such Rule were part of Nasdaq's Rules.

* * * * *

[3090] 2070A. Transactions Involving Nasdaq Employees

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

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

(c) Notwithstanding the annual dollar limitation set forth in Nasdaq Rule [3060] 3220A, no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Nasdaq employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.