Members. The Commission believes that this proposed rule change, as amended, should foster cooperation and promote a relationship between the ISE and the OCC that is conducive to the effective operation of the Linkage.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change, as amended, (File No. SR–ISE–2003–15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24755 Filed 9–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48501; File No. SR–NASD–2003–128]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Establishing a Maximum ECN Access Fees in SuperMontage and Elimination of SuperMontage's Price/Time With Fee Consideration and Price/Size Execution Algorithms

September 17, 2003.

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 August 11, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On September 10, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed Amendment No. 2 to the proposed rule change on September 15, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend NASD Rules 4623 and 4710 to: (1) establish a maximum level of quote/order access fees for Electronic Communications Networks (''ECNs'') that elect to participate in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''); (2) eliminate SuperMontage's Price/Time with access fee consideration execution algorithm; and (3) eliminate SuperMontage's Price/Size execution algorithm. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4623. Alternative Trading Systems

(a) No Change.

(b) An ATS or ECN that seeks to utilize the Nasdaq-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to Nasdaq voluntarily shall:

(1) through (5) No Change.

(6) not charge to broker-dealers that access the ATS or ECN through *The* Nasdaq *National Market Execution System (SuperMontage)* any fee that is inconsistent with the requirements of SEC Rule 301(b)(4) *or that exceeds $0.003 per share.*

(c) No Change.

* * * * *

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (v) No Change.

(w) The term ''NNMS Order Entry Firm'' shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS. *This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.*

(x) through (jj) No Change.

* * * * *

4710. Participant Obligations in NNMS

(a) Registration—Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations For each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

(iii) UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed

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[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 9, 2003, replacing Nasdaq's original Form 19b–4 filing in its entirety (''Amendment No. 1'').

[4] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated September 12, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq made technical corrections to its rule text.

Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order [is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule),] and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. [Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule.] The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm[s] described [in paragraphs (i), (ii) and (iii)] below, ''Displayed Quotes/Orders'' shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) [Default] Execution AlgorithmPrice/Time—The system will [default to a strict price/time priority within Nasdaq, and will attempt to] access interest in the system in the following priority and order:

a. through c. No Change.

[(ii) Price/Time Priority Considering Quote-Access Fees—If this option is chosen, the system will attempt to access interest in the system in the following priority and order:

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

b. Displayed Quotes/Orders of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders;

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

d. Reserve Size of NNMS ECNs that charge a separate quote-access fee to non-subscribers, in time priority between such participants' Quotes/Orders; and

e. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(iii) Price/Size Priority—If this option is chosen, Non-Directed Orders shall be executed in price/size/time priority against:

a. Displayed Quotes/Orders of NNMS Market Makers, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, displayed Quotes/Orders of NNMS ECNs, and non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in price/size/time priority between such participants' Quotes/Orders;

b. The Reserve Size of Nasdaq Quoting Market Participants and NNMS Order Entry Firms, in price/size/time priority between such participants' Quotes/Orders, which size priority shall be based on the size of the Displayed Quote/Order, and not on the amount held in Reserve Size; and

c. Principal Quotes/Orders of UTP Exchanges, in price/size/time priority between such participants' Quotes/Orders.]

[(iv)] *(ii)* Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. This exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms. Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order[, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order] *in price/time priority*. The I value described above shall be available for the use of Nasdaq Quoting Market Participants on May 12, 2003.

b. through c. No Change.

(C) through (D) No Change.

(2) through (8) No Change.

(c) through (e) No Change.

* * * * *

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at

the places specified in Item IV below. Nasdaq 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

The rules of Nasdaq's SuperMontage system allow the participation of ECNs. Many of these ECNs charge, as permitted by the Securities and Exchange Commission, a separate fee to other market participants that access the ECN's quote/order. There is, however, substantial disparity in the level of these fees among ECNs participating in SuperMontage, with some ECNs charging access fees, in some instances, three times as high as other participating ECNs.

Nasdaq believes that these gross fee disparities are of particular concern in a system like SuperMontage that extensively automates the matching of buy and sell trading interest using neutral execution algorithms that limit the ability of users to select or anticipate exactly who their counter-party, or counter-parties, to particular trade will be. The result is that users enter orders into SuperMontage and end up executing against a variety of market participants including, in some cases, ECNs that charge access fees significantly higher than others. In turn, Nasdaq believes that the inability of system users to reasonably anticipate their trading costs, due to these large access fee disparities, discourages those users from entering their quote/orders into the SuperMontage system thereby depriving all SuperMontage participants of beneficial liquidity.

In response to the above, Nasdaq has determined to establish, as explicitly permitted by Rule 301(b)(4) of Regulation ATS,[5] a maximum permissible quote/order access fee amount for ECNs that elect to participate and execute transactions in the SuperMontage system. Nasdaq proposes to establish the maximum SuperMontage ECN access fee amount at $0.003 (three mils) per share. Participating ECNs will be free to charge quote/order access fees less than the $0.003 maximum. Nasdaq notes that the $0.003 maximum proposed here is equivalent to the execution fee Nasdaq imposes on parties automatically executing against quotes/orders through SuperMontage. Nasdaq believes that this access fee level is also generally in keeping with the level of access fee imposed by most ECNs today. In addition, Nasdaq believes that the $0.003 access fee cap retains transparency in the system by maintaining a reasonable nexus between displayed prices in the montage and actual execution prices obtained by market participants that interact with fee-charging ECNs. As such, Nasdaq believes that $0.003 maximum access fee is designed to maintain consistency in Nasdaq's market and provide equivalent and fair access to available quotes/orders.

ECNs that desire to charge more than $0.003 amount for access to its quote/orders will not be permitted to post liquidity in SuperMontage as an NNMS ECN. They will, however, be permitted to continue to participate in SuperMontage as NNMS Order Entry Firms as a method to access or post liquidity in the system. As NNMS Order Entry Firms, those ECNs will have any quotes/orders entered into the system displayed and processed in the same manner as other NNMS Order Entry Firms. This will include having such quote/orders be represented only via the SIZE MMID and also making them subject to automatic execution. As NNMS Order Entry Firms, these ECNs will not be allowed to impose *any* fee on a broker-dealer that accesses them through the SuperMontage system. As NNMS Order Entry Firms, such ECNs will be eligible for Nasdaq's liquidity provider rebate.

In concert with establishing a maximum ECN quote access fee amount, Nasdaq has also determined to eliminate the Price/Time with fee consideration execution algorithm currently available in SuperMontage. Nasdaq believes that, having rationalized ECN access fees through the establishment of a maximum fee amount, it is also now appropriate to eliminate the Price/Time with fee consideration execution algorithm within the system for all ECNs that have agreed to participate in SuperMontage and comply with the ECN $0.003 maximum fee standard. Nasdaq views the proposals to establish a maximum ECN quote/order access fee in SuperMontage and to eliminate the above execution algorithm as linked and will implement them at the same time.

Finally, Nasdaq has also determined to eliminate SuperMontage's Price/Size execution algorithm. This algorithm is rarely used in SuperMontage, with a recent analysis indicating that it accounts for less than 7% of orders entered into the system. In addition, elimination of the Price/Size algorithm reduces system complexity within SuperMontage. In order to efficiently manage Nasdaq programming resources, elimination of the Price/Size execution algorithm will take place on the same date as the elimination of the Price/Time with fee consideration algorithm.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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. Nasdaq believes that the creation of a maximum ECN access fee put forth in this proposal is explicitly permitted by Regulation ATS' Rule 301(b)(4) which provides in relevant part "* * * if the national securities exchange or national securities association to which an alternative trading system provides the prices and sizes of orders * * * establishes rules designed to ensure consistency with standards for access to the quotations displayed on such national securities exchange, or the market operated by such national securities association, the alternative trading system shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules."

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

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

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

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

[5] 17 CFR 242.301(b)(4).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–128 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48527; File No. SR–NASD–2003–85]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendments No. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, 5, and 7 Thereto Relating to a Post-Trade Anonymity Feature in SuperMontage

September 23, 2003.

I. Introduction

On May 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add a post-trade anonymity feature to SuperMontage. On June 2, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On June 23, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 2, 2003.[5] The Commission received five comment letters on the proposal, as amended by Amendment Nos. 1 and 2.[6] On August 6, 2003, Nasdaq filed a response to the comment letters.[7] On August 11, 2003, Nasdaq filed Amendment No. 3 to the proposed rule change.[8] On September 8, September 16, September 17, and September 22, 2003, Nasdaq filed Amendment Nos. 4,[9] 5,[10] 6,[11] and 7[12] respectively, to the proposed rule change. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment Nos. 3, 4, 5, and 7.

II. Description of the Proposed Rule Change

Nasdaq's current pre-trade anonymity feature allows market makers, electronic communication networks (''ECNs'') and order entry firms (''OE Firms'') to submit anonymous orders to SuperMontage for display under the ''SIZE'' market participant identifier

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 29, 2003 (''Amendment No. 1'').

[4] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated June 20, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48088 (June 25, 2003), 68 FR 39605 (July 2, 2003) (''Notice'').

[6] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Jim Dyer, Senior Vice President & Trading Room Manager, Brokerage America, LLC, dated July 24, 2003 (''BAMM Letter''); Kim Bang, Bloomberg Tradebook LLC, dated July 24, 2003 (''Bloomberg Letter''); William O'Brien, Chief Operating Officer, Brut, LLC, dated July 29, 2003 (''Brut Letter''); C. Thomas Richardson, Managing Director, Citigroup Global Capital Markets, Inc., dated July 25, 2003 (''Citigroup Letter''); and John Hughes, Chairman, and John C. Giesea, President and Chief Executive Officer, Security Traders Association, dated July 23, 2003 (''STA Letter''). The letters are described in Section III, *infra.*

[7] *See* Letter from Edward S. Knight, Executive Vice President, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated August 4, 2003 (''Nasdaq Response Letter'').

[8] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated July 31, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq clarified in certain NASD rules that Nasdaq will remove a member from Nasdaq's systems when the member loses its clearing relationship. Members removed from a Nasdaq system can invoke their right to seek redress under the NASD Rule 9700 Series. The amendment also contains non-substantive changes to NASD Rules 4705, 5012, and 6120 to reflect that indirect participation in a clearing agency occurs through a ''participant,'' as such term is defined in Section 3(a)(24) of the Act.

[9] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division, Commission, dated September 4, 2003 (''Amendment No. 4''). In Amendment No. 4, Nasdaq created an additional exception to the anonymous processing of orders; made technical corrections in its rule text clarifying that Nasdaq must reveal member's identity in certain circumstances; explained how the help desk will operate to assist members with anonymous trades; and clarified Nasdaq's record keeping obligations.

[10] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Terri Evans, Assistant Director, Division, Commission, dated September 15, 2003 (''Amendment No. 5''). In Amendment No. 5, Nasdaq codified its earlier representations regarding retention of information on behalf of its members to satisfy the members' books and records obligation. See Amendments 2 and 4, *supra* notes 4 and 9, respectively.

[11] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 16, 2003 (''Amendment No. 6''). In Amendment No. 6, Nasdaq made a technical correction to its rule text to clarify those circumstances when members would be required to retain their recordkeeping obligations.

[12] *See* Letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Thomas McGowan, Assistant Director, Division, Commission, dated September 17, 2003 (''Amendment No. 7''). In Amendment No. 7, Nasdaq, in essence, withdrew Amendment No. 6 since it replaced in its entirety proposed Rule 4719(e)(ii), which was initially proposed in Amendment No. 5 and subsequently amended by Amendment No. 6.