

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2002

OR

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-32651

**THE NASDAQ STOCK MARKET, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**52-1165937**  
(IRS Employer  
Identification No.)

**One Liberty Plaza**  
**New York, New York**  
(Address of Principal executive offices)

**10006**  
(Zip code)

**(866) 745-1825**

(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

As of November 8, 2002, 78,183,754 shares of the Registrant's Common Stock, par value \$0.01 per share ("Common Stock"), were outstanding.

**The Nasdaq Stock Market, Inc.**  
**Form 10-Q**  
**For the Quarter Ended September 30, 2002**

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Forward-looking statements in this Quarterly Report on Form 10-Q are subject to known and unknown risks, uncertainties and other factors which may cause our actual results, performance, or achievements to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements. These forward-looking statements were based on various factors and were derived utilizing numerous assumptions and other factors that could cause actual results to differ materially from those in the forward-looking statements. These factors include, but are not limited to, The Nasdaq Stock Market, Inc.'s ability to implement its strategic initiatives, economic, political, and market conditions and fluctuations, government and industry regulation, interest rate risk, U.S. and global competition, and other factors that are more fully described under the caption "Item 1. Business—Risk Factors" in The Nasdaq Stock Market, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2001, as amended. Most of these factors are difficult to predict accurately and are generally beyond our control. You should consider the areas of risk described in connection with any forward-looking statements that may be made herein. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of September 30, 2002. Except for our ongoing obligations to disclose material information under the Federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events, or to report the occurrence of unanticipated events. For any forward-looking statements contained in any document, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

**The Nasdaq Stock Market, Inc.**  
**PART I—FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**The Nasdaq Stock Market, Inc.**  
**Condensed Consolidated Statements of Income**  
**(Unaudited)**  
**(in thousands, except per share amounts)**

|  | Three months ended    |                       | Nine months ended     |                       |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
|  | September 30,<br>2002 | September 30,<br>2001 | September 30,<br>2002 | September 30,<br>2001 |
| <b>Revenues</b>                                      |                       |                       |                       |                       |
| Transaction Services                                 | \$ 93,854             | \$ 86,198             | \$ 303,870            | \$ 311,051            |
| Market Information Services                          | 49,092                | 58,255                | 150,863               | 176,925               |
| Corporate Client Group Services                      | 44,248                | 39,378                | 132,115               | 116,463               |
| Other  | 11,894                | 13,877                | 28,795                | 37,342                |
| <b>Total revenues</b>                                | <b>199,088</b>        | <b>197,708</b>        | <b>615,643</b>        | <b>641,781</b>        |
| <b>Expenses</b>                                      |                       |                       |                       |                       |
| Compensation and benefits                            | 51,322                | 45,322                | 142,434               | 131,131               |
| Marketing and advertising                            | 6,121                 | 5,948                 | 14,159                | 17,597                |
| Depreciation and amortization                        | 25,130                | 22,894                | 75,228                | 65,558                |
| Professional and contract services                   | 17,237                | 22,858                | 49,270                | 54,424                |
| Computer operations and data communications          | 35,284                | 43,927                | 113,163               | 131,875               |
| Provision for bad debts                              | 2,496                 | 1,457                 | 9,004                 | 14,460                |
| Travel, meetings, and training                       | 2,710                 | 3,715                 | 9,438                 | 11,193                |
| Occupancy  | 7,454                 | 6,404                 | 24,427                | 19,866                |
| Publications, supplies, and postage                  | 2,733                 | 2,884                 | 7,772                 | 8,538                 |
| Nasdaq Japan impairment loss                         | ¾                     | ¾                     | 15,208                | ¾                     |
| Disaster related                                     | ¾                     | 843                   | ¾                     | 843                   |
| Other  | 2,025                 | 10,289                | 19,942                | 28,594                |
| <b>Total direct expenses</b>                         | <b>152,512</b>        | <b>166,541</b>        | <b>480,045</b>        | <b>484,079</b>        |
| Support costs from related parties, net              | 21,102                | 24,413                | 56,453                | 76,121                |
| <b>Total expenses</b>                                | <b>173,614</b>        | <b>190,954</b>        | <b>536,498</b>        | <b>560,200</b>        |
| Net operating income                                 | 25,474                | 6,754                 | 79,145                | 81,581                |
| Interest income                                      | 2,829                 | 6,672                 | 9,301                 | 16,649                |
| Interest expense                                     | (6,319)               | (2,997)               | (13,448)              | (5,447)               |
| Minority interests                                   | 2,953                 | 3,252                 | 8,551                 | 5,234                 |
| Net income before taxes                              | 24,937                | 13,681                | 83,549                | 98,017                |
| Provision for income taxes                           | (12,226)              | (5,736)               | (40,741)              | (44,297)              |
| <b>Net income</b>                                    | <b>\$ 12,711</b>      | <b>\$ 7,945</b>       | <b>\$ 42,808</b>      | <b>\$ 53,720</b>      |
| <b>Net income applicable to common stockholders:</b> |                       |                       |                       |                       |
| Net income   | \$ 12,711             | \$ 7,945              | \$ 42,808             | \$ 53,720             |
| Accretion of preferred stock dividends               | 2,441                 | ¾                     | 7,323                 | ¾                     |
| <b>Net income applicable to common stockholders</b>  | <b>\$ 10,270</b>      | <b>\$ 7,945</b>       | <b>\$ 35,485</b>      | <b>\$ 53,720</b>      |
| <b>Basic earnings per common share</b>               | <b>\$ 0.13</b>        | <b>\$ 0.07</b>        | <b>\$ 0.42</b>        | <b>\$ 0.45</b>        |

|                                   |    |      |    |      |    |      |    |      |
|-----------------------------------|----|------|----|------|----|------|----|------|
| Diluted earnings per common share | \$ | 0.13 | \$ | 0.07 | \$ | 0.40 | \$ | 0.44 |
|-----------------------------------|----|------|----|------|----|------|----|------|

See accompanying notes.

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**The Nasdaq Stock Market, Inc.**  
**Condensed Consolidated Balance Sheets**  
(in thousands, except share amounts)

|  | September 30,<br>2002<br>(Unaudited) | December 31,<br>2001 |
|--|--------------------------------------|----------------------|
| <b>Assets</b>                                    |                                      |                      |
| Current assets:                                  |                                      |                      |
| Cash and cash equivalents                        | \$ 274,170                           | \$ 293,731           |
| Investments:                                     |                                      |                      |
| Available-for-sale, at fair value                | 184,503                              | 228,029              |
| Held-to-maturity, at amortized cost              | 15,653                               | —                    |
| Receivables, net                                 | 174,017                              | 194,040              |
| Receivables from related parties                 | 12,135                               | 34,953               |
| Deferred tax asset                               | 50,824                               | 51,170               |
| Other current assets                             | 10,239                               | 13,249               |
| Total current assets                             | <u>721,541</u>                       | <u>815,172</u>       |
| Investments:                                     |                                      |                      |
| Held-to-maturity, at amortized cost              | 12,821                               | 28,569               |
| Property and equipment:                          |                                      |                      |
| Land, buildings, and improvements                | 93,038                               | 88,861               |
| Data processing equipment and software           | 484,089                              | 441,928              |
| Furniture, equipment, and leasehold improvements | 181,861                              | 184,572              |
|  | <u>758,988</u>                       | <u>715,361</u>       |
| Less accumulated depreciation and amortization   | <u>(399,796)</u>                     | <u>(336,528)</u>     |
| Total property and equipment, net                | 359,192                              | 378,833              |
| Non-current deferred tax asset                   | 73,163                               | 74,987               |
| Goodwill   | 10,138                               | 10,138               |
| Other intangible assets                          | 7,437                                | 9,331                |
| Other assets                                     | 7,262                                | 9,221                |
| Total assets                                     | <u>\$ 1,191,554</u>                  | <u>\$ 1,326,251</u>  |

See accompanying notes.

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**The Nasdaq Stock Market, Inc.**  
**Condensed Consolidated Balance Sheets (continued)**  
(in thousands, except share amounts)

|  | September 30,<br>2002<br>(Unaudited) | December 31,<br>2001 |
|--|--------------------------------------|----------------------|
| <b>Liabilities</b>                         |                                      |                      |
| Current liabilities:                       |                                      |                      |
| Accounts payable and accrued expenses      | \$ 89,824                            | \$ 123,136           |
| Accrued personnel costs                    | 36,553                               | 43,744               |
| Deferred revenue                           | 90,785                               | 65,366               |
| Other accrued liabilities                  | 35,866                               | 47,296               |
| Current obligation under capital lease     | 4,048                                | 4,454                |
| Payables to related parties                | 24,623                               | 9,556                |
| Total current liabilities                  | <u>281,699</u>                       | <u>293,552</u>       |
| Long-term debt:                            |                                      |                      |
| Senior notes                               | 200,122                              | 48,548               |
| Subordinated notes                         | 240,000                              | 240,000              |
| Non-current obligation under capital lease | 9,046                                | 12,125               |
| Accrued pension costs                      | 24,853                               | 24,064               |
| Non-current deferred tax liability         | 50,772                               | 41,981               |
| Non-current deferred revenue               | 108,666                              | 121,687              |
| Other liabilities                          | 13,016                               | 20,529               |
| Total long-term liabilities                | <u>646,475</u>                       | <u>508,934</u>       |
| Total liabilities                          | 928,174                              | 802,486              |

|   |              |              |
|---|--------------|--------------|
| Minority interests  | (2,654)      | 5,377        |
| <b>Stockholders' equity</b>   |              |              |
| Common stock, \$.01 par value, 300,000,000 authorized, shares issued: 130,435,967 at September 30, 2002 and 130,161,823 at December 31, 2001; shares outstanding: 78,183,754 at September 30, 2002 and 111,700,285 at December 31, 2001 | 1,304        | 1,302        |
| Preferred stock, 30,000,000 authorized, Series A: 1,338,402 shares issued and outstanding; Series B: 1 share issued and outstanding   | 131,399      | —            |
| Additional paid-in capital  | 357,996      | 348,457      |
| Common stock in treasury, at cost: 52,252,213 at September 30, 2002 and 18,461,538 shares at December 31, 2001  | (669,454)    | (240,000)    |
| Accumulated other comprehensive income  | (6,287)      | (6,976)      |
| Deferred stock compensation   | (2,370)      | (3,350)      |
| Common stock issuable   | 5,071        | 6,065        |
| Retained earnings   | 448,375      | 412,890      |
| Total stockholders' equity  | 266,034      | 518,388      |
| Total liabilities, minority interests, and stockholders' equity   | \$ 1,191,554 | \$ 1,326,251 |

See accompanying notes.

**The Nasdaq Stock Market, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(Unaudited)  
(in thousands)

|  | Nine months ended     |                       |
|--|-----------------------|-----------------------|
|  | September 30,<br>2002 | September 30,<br>2001 |
| <b>Reconciliation of net income to cash provided by operating activities</b> |                       |                       |
| Net income   | \$ 42,808             | \$ 53,720             |
| Non-cash items included in net income:                                       |                       |                       |
| Depreciation and amortization  | 75,228                | 65,558                |
| Amortization of restricted stock awards and other stock-based compensation   | 2,842                 | 5,252                 |
| Minority interests   | (8,551)               | (5,234)               |
| Provision for bad debts  | 9,004                 | 14,460                |
| Loss from equity-method affiliates   | 9,561                 | 12,479                |
| Nasdaq Japan impairment loss   | 15,208                | ¾                     |
| Deferred taxes   | 10,963                | (3,092)               |
| Other non-cash items included in net income                                  | (5,364)               | 3,545                 |
| Net change in:   |                       |                       |
| Receivables, net   | 11,019                | (30,983)              |
| Receivables from related parties   | 22,872                | (9,085)               |
| Other current assets   | 3,010                 | 3,315                 |
| Other assets   | 4,224                 | (14,947)              |
| Accounts payable and accrued expenses  | (33,312)              | (38,067)              |
| Accrued personnel costs  | (7,414)               | (138)                 |
| Deferred revenue   | 12,398                | 3,697                 |
| Other accrued liabilities  | (11,430)              | (142)                 |
| Obligation under capital leases  | (3,485)               | (287)                 |
| Payables to related parties  | 6,161                 | 8,236                 |
| Accrued pension costs  | 789                   | 6,168                 |
| Other liabilities  | (4,622)               | 11,612                |
| <b>Cash provided by operating activities</b>                                 | <b>151,909</b>        | <b>86,067</b>         |
| <b>Cash flow from investing activities</b>                                   |                       |                       |
| Proceeds from redemptions of available-for-sale investments                  | 183,931               | 280,007               |
| Purchases of available-for-sale investments                                  | (152,574)             | (276,515)             |
| Proceeds from held-to-maturity investments                                   | ¾                     | 20,865                |
| Purchases of held-to-maturity investments                                    | ¾                     | (20,820)              |
| Acquisition, net of cash acquired  | ¾                     | 558                   |
| Capital contribution to Nasdaq LIFFE joint venture                           | (13,000)              | ¾                     |
| Purchases of property and equipment  | (78,809)              | (99,541)              |
| Proceeds from sales of property and equipment                                | 34,200                | 13,426                |
| <b>Cash used in investing activities</b>                                     | <b>(26,252)</b>       | <b>(82,020)</b>       |
| <b>Cash flow from financing activities</b>                                   |                       |                       |
| Proceeds from Phase II private placement offering                            | ¾                     | 63,688                |
| Payments for treasury stock purchases  | (305,155)             | (240,000)             |
| Increase in long-term debt   | 151,574               | 249,543               |
| Purchase of minority interests in Nasdaq Europe Planning Company Limited     | ¾                     | (20,000)              |
| Issuances of common stock  | 1,496                 | ¾                     |
| Issuances of subsidiary stock  | 1,298                 | 9,564                 |

|  |                   |                   |
|--|-------------------|-------------------|
| Contribution from the NASD                             | 5,569             | ¾                 |
| <b>Cash (used in) provided by financing activities</b> | <b>(145,218)</b>  | <b>62,795</b>     |
| (Decrease) increase in cash and cash equivalents       | (19,561)          | 66,842            |
| Cash and cash equivalents at beginning of period       | 293,731           | 262,257           |
| Cash and cash equivalents at end of period             | <u>\$ 274,170</u> | <u>\$ 329,099</u> |

**Supplemental Disclosure of Non-Cash Flow Activities:**

|  |                   |             |
|--|-------------------|-------------|
| Payments for treasury stock purchases with issuance of preferred stock | <u>\$ 124,075</u> | <u>\$ ¾</u> |
|--|-------------------|-------------|

See accompanying notes.

**The Nasdaq Stock Market, Inc.**  
**Notes to Condensed Consolidated Financial Statements**

**1. Organizations and Nature of Operations**

The Nasdaq Stock Market, Inc. (“Nasdaq”) operates the world’s largest electronic screen-based equity securities market, which is the world’s largest equity securities market, based on share volume. Nasdaq is the parent company of Nasdaq Global Holdings (“Nasdaq Global”); Quadsan Enterprises, Inc. (“Quadsan”); Nasdaq Financial Products Services, Inc. (“Nasdaq Financial Products”); Nasdaq International Market Initiatives, Inc. (“NIMI”); and Nasdaq Canada, Inc. (“Nasdaq Canada”) collectively referred to as “Nasdaq”. These entities are wholly-owned by Nasdaq. Nasdaq Tools Inc. (“Nasdaq Tools”), which was previously a wholly-owned subsidiary of Nasdaq, was merged with and into Nasdaq on July 31, 2002. (See Note 2, Significant Transactions, for further discussion.) As of September 30, 2002, Nasdaq also owned a 59.4% interest in Nasdaq Europe S.A./N.V. (“Nasdaq Europe”) and a 50.0% interest in Nasdaq LIFFE Markets, LLC (“NQLX”).

Nasdaq Global, which is incorporated in Switzerland, is the holding company for Nasdaq’s investments in IndigoMarkets<sup>SM</sup> Ltd. (“IndigoMarkets”) and Nasdaq Japan, Inc. (“Nasdaq Japan”), in which Nasdaq Global had 55.0% and 39.7% interests, respectively, as of September 30, 2002. During the second quarter of 2002, Nasdaq recognized an other than temporary impairment of its investment in Nasdaq Japan. On August 16, 2002 the Board of Directors of Nasdaq Japan voted to take the company to dormant status, effectively ceasing operations. (See Note 2, Significant Transactions, for further discussion). Nasdaq Europe Planning Company, Limited (“Nasdaq Europe Planning”) is owned by Nasdaq Global and Nasdaq. Nasdaq Europe Planning was formed to expand Nasdaq into the European community; however, it has been inactive due to the purchase of Nasdaq’s interest in Nasdaq Europe. Nasdaq Europe is a pan-European market headquartered in Brussels. Nasdaq International Ltd., a wholly-owned subsidiary of Nasdaq Global is a London based marketing company. Quadsan is a Delaware investment holding company that provides investment management services for Nasdaq. Nasdaq Financial Products is the sponsor of the Nasdaq-100 Trust. Nasdaq Financial Products Services (Ireland) Limited (“Nasdaq Ireland”) is a wholly-owned subsidiary of Nasdaq Financial Products. Nasdaq Ireland is the manager of The Nasdaq Exchange Traded Fund PLC. NIMI offers a variety of consulting services to assist emerging and established securities markets around the world with both technology applications and regulation. Nasdaq Canada was created to develop a new securities market within Canada under a cooperative agreement with the Provincial Government of Quebec.

Nasdaq operates in one segment as defined in the Statement of Financial Accounting Standards (“SFAS”) No. 131, “Disclosures About Segments of an Enterprise and Related Information.” Nasdaq uses a multiple market participant system to operate an electronic, screen-based equity market. Nasdaq’s principal business products are Transaction Services, Market Information Services, and Corporate Client Group Services. The majority of this business is transacted with companies listed on The Nasdaq Stock Market®, market data vendors, and firms in the broker-dealer industry within the United States.

All material intercompany accounts and transactions have been eliminated in consolidation. Nasdaq’s financial statements have been prepared in accordance with the rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”) with respect to the Form 10-Q and reflect all normal recurring adjustments that are, in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. Pursuant to such rules and regulations, certain footnote disclosures, which are normally required under accounting principles generally accepted in the United States, have been omitted. It is recommended that these financial statements be read in conjunction with the Consolidated Financial Statements included in Nasdaq’s Annual Report filed on Form 10-K for the year ended December 31, 2001, as amended.

The nature of Nasdaq’s business is such that the results of any interim period may vary significantly from quarter to quarter and may not be indicative of the results to be expected for the fiscal year. Certain prior period amounts reflect reclassifications to conform to the current period’s presentation. Nasdaq has also changed its presentation of the Condensed Consolidated Statement of Cash Flows from the direct method to the indirect method for the nine months ended September 30, 2001 to conform to the current period presentation.

**2. Significant Transactions**

*Nasdaq Common Stock*

On July 1, 2002, the Common Stock of Nasdaq began trading under the symbol “NDAQ” on the Over-the-Counter Bulletin Board. The limited trading of the security began upon the expiration of the contractual transfer restrictions imposed in connection with the sale of Common Stock by Nasdaq and the National Association of Securities Dealers, Inc. (“NASD”) in the private placements of Common Stock in June 2000 and January 2001.

*Nasdaq Japan*

During the second quarter of 2002, Nasdaq recognized an other than temporary impairment of its investment in Nasdaq Japan. Nasdaq recognized this impairment as a result of the depressed level of market activity in Japan, combined with the suspension of Nasdaq Japan’s hybrid trading system due to the inability to gain exchange approval of market rules and industry participation. These conditions led management to conclude that Nasdaq Japan would

not be profitable in the foreseeable future. Accordingly, Nasdaq Japan does not have the capacity to raise capital to fund its operations beyond this year. Thus, Nasdaq Japan's financial liabilities to Nasdaq were not expected to be repaid and were recognized as a loss.

The net impact of the other than temporary impairment on Nasdaq's pre-tax income for the three months ended June 30, 2002 was \$15.2 million. This represented a complete write-down of the investment, outstanding and unfunded loans (an additional \$6.0 million was loaned and \$7.0 million was committed during the three months ended June 30, 2002), foreign exchange translation losses and other receivables, partially offset by a re-valuation of certain variable Nasdaq Japan stock based awards of approximately \$7.9 million.

On August 16, 2002, the Board of Directors of Nasdaq Japan voted to take the company to dormant status, effectively ceasing operations. After careful consideration of a range of options, Nasdaq Japan's Board concluded that under current economic circumstances there was not a profitable path forward for the company. A letter was sent to the Osaka Securities Exchange formally giving notice of termination of the Business Cooperation Agreement between the Osaka Exchange and Nasdaq Japan. Meetings of the shareholders of Nasdaq Japan to consider approval of the actions taken by Nasdaq Japan's Board are currently scheduled in November and December 2002. It is expected that Nasdaq Japan will enter into liquidation status in late November 2002 and will be dissolved in the second quarter of 2003. Companies listed on the Nasdaq Japan Market will retain their listing on the Osaka Exchange and no disruption to trading is expected.

#### *Nasdaq Tools*

On July 31, 2002, Nasdaq Tools, which provides software products and services related to the broker-dealer industry to be used in conjunction with Nasdaq Workstation II software, was merged into Nasdaq in a statutory merger under the General Corporation Law of the State of Delaware. Nasdaq Tools was previously a wholly-owned subsidiary of Nasdaq. Pursuant to the merger, Nasdaq acquired all assets and assumed all liabilities and obligations of Nasdaq Tools and now operates Nasdaq Tools as Nasdaq Trading Applications, a part of Nasdaq's Transaction Services business products. Nasdaq Trading Applications provides software products and will continue to develop software products to be used by the broker-dealer industry. Prior to July 31, 2002, revenue from Nasdaq Tools was disclosed as Other Revenue. As such, prior period amounts have been reclassified to conform to the current period presentation.

#### *Nasdaq Member Revenue Sharing*

Effective June 1, 2002, Nasdaq terminated its market data revenue sharing program for securities listed on The Nasdaq Stock Market, as a result of the SEC's decision to abrogate certain market participant tape sharing pilot programs. The SEC's action was in response to concerns about the effect of market data rebates on the accuracy of market data and the regulatory functions of self-regulatory organizations. The SEC's action allows Nasdaq and competing exchanges to retain tape revenue. Nasdaq continues to share market data revenue with the exchanges that participate in the Unlisted Trading Privileges ("UTP") Plan based on their respective share of volume and trades of securities listed on The Nasdaq Stock Market. In addition, Nasdaq InterMarket continues to share tape revenue with Nasdaq market participants who report trades in New York Stock Exchange ("NYSE") and American Stock Exchange, LLC ("Amex") listed securities through Nasdaq.

#### *Revolving Credit Agreement*

On August 29, 2002, Nasdaq entered into a \$150.0 million unsecured revolving-credit facility, (the "Facility"). The Facility, which is syndicated to five banks, makes \$150.0 million available to Nasdaq for a 364-day term. Nasdaq intends to use the Facility for general corporate purposes. The interest rate applicable to borrowings under the Facility (a) for United States based loans will be based on the higher of Citibank N.A.'s base rate and 0.5 percent per annum above the then current Federal Funds rate and (b) for LIBOR loans will be based on the offered rate for deposits in the United States dollars with a comparable maturity plus 0.36 percent per annum. The Facility has various covenants customary for this type of Facility that require Nasdaq, among other things, to maintain various financial ratios such as consolidated long-term debt to capitalization, minimum tangible net worth and consolidated earnings before interest and taxes to consolidated interest expense. Noncompliance with the terms of the Facility by Nasdaq could result in the cancellation of the Facility with any amounts outstanding under the Facility becoming payable immediately. At September 30, 2002, Nasdaq had not utilized the Facility, and the entire \$150.0 million of the Facility was available.

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#### *Long-term Debt*

On May 9, 2002, Nasdaq issued and sold \$150.0 million in aggregate principal amount of its 5.83% senior notes due 2007 (the "Senior Notes") in a private placement. The Senior Notes are unsecured, pay interest quarterly, and may be redeemed by Nasdaq at any time, subject to a make-whole amount. The make-whole amount is equal to the excess of the discounted value of the remaining scheduled payments discounted at a factor equal to 50 basis points over the yield to maturity of U.S. Treasury securities having a maturity equal to the remaining average life of the redeemed amount. The proceeds from the Senior Notes, approximately \$149.0 million after payment of placement agent commissions and expenses of this offering, were used to fund a portion of the cash consideration paid to the NASD in the Repurchase (defined below) and for general corporate purposes.

#### *Repurchase of Shares from the NASD*

On March 8, 2002, Nasdaq completed a two-stage repurchase (the "Repurchase") of 33,768,895 shares of Nasdaq's Common Stock owned by the NASD, which represented all of the remaining outstanding shares of Common Stock owned by the NASD, except for the 43,225,976 shares of Common Stock underlying the warrants issued by the NASD as part of its restructuring of the ownership in Nasdaq (the "Restructuring"). Nasdaq purchased the Common Stock for \$305.2 million in aggregate cash consideration, 1,338,402 shares of Nasdaq's Series A Cumulative Preferred Stock (face and liquidation value of \$100 per share, plus any accumulated unpaid dividends), and one share of Nasdaq's Series B Preferred Stock, (face and liquidation value of \$1.00 per share). The NASD owns all of the outstanding shares of Series A and Series B Preferred Stock. All of the shares of Common Stock repurchased by Nasdaq from the NASD have been placed into Common Stock in treasury.

Dividends payable to the NASD on the Series A Preferred Stock do not begin accruing until March 2003. The Series A Preferred Stock carries a 7.6% dividend rate for the year commencing March 2003 and 10.6% in all years commencing after March 2003, payable at the discretion of Nasdaq's Board of Directors. Shares of Series A Preferred Stock do not have voting rights, except for the right as a class to elect two new directors to the Board of Directors anytime distributions on the Series A Preferred Stock are in arrears for four consecutive quarters and as otherwise required by Delaware law. The Series B Preferred Stock does not pay dividends. The Series B Preferred Stock entitles the NASD to cast the number of votes that, together with all other votes that the NASD is entitled to vote by virtue of ownership, proxies or voting trusts, enables the NASD to cast one vote more than one-half of all votes entitled to be cast by stockholders of

Nasdaq. If Nasdaq obtains registration as a national securities exchange ("Exchange Registration"), the share of Series B Preferred Stock will automatically lose its voting rights and will be redeemed by Nasdaq. Nasdaq may redeem the shares of Series A Preferred Stock at any time after Exchange Registration and is required to use the net proceeds from an initial public offering ("IPO"), and upon the occurrence of certain other events, to redeem all or a portion of the Series A Preferred Stock.

#### Phase II Private Placement

The NASD's plan to broaden the ownership in Nasdaq through the Restructuring was initially executed through a two-phase private placement by (a) Nasdaq of newly-issued shares of Common Stock, and (b) the NASD of shares of outstanding Common Stock and warrants to purchase outstanding shares of Common Stock owned by the NASD. The second phase of the private placement closed on January 18, 2001 with Nasdaq selling approximately 5.0 million shares, yielding net proceeds of approximately \$63.7 million.

### 3. Change in Accounting Principle

On August 17, 2001, Nasdaq concluded discussions with the SEC with respect to the implementation in its financial statements of Staff Accounting Bulletin 101, "Revenue Recognition in Financial Statements" ("SAB 101"), which became effective for SEC reporting companies in the fourth quarter of 2000. Nasdaq became a SEC public reporting company on June 29, 2001, the effective date of its Registration Statement on Form 10. As a result of the discussions with the SEC, Nasdaq changed its method of accounting for revenue recognition for certain components of its Corporate Client Group Services revenues.

In accordance with accounting principles generally accepted in the United States, as SAB 101 was adopted effective the fourth quarter of 2000, the change in accounting principle has been applied as of January 1, 2000. In accordance with applicable accounting guidance prior to SAB 101, Nasdaq recognized revenue for issuer initial listing fees and listing of additional shares ("LAS") fees in the month the listing occurred or in the period additional shares were issued, respectively. Nasdaq now recognizes revenue related to initial listing fees and LAS fees on a straight-line basis over estimated service periods, which are six and four years, respectively.

For the three months ended September 30, 2002 and 2001, Nasdaq recognized \$7.5 million and \$10.9 million in revenue, respectively, that was included in the cumulative effect adjustment as of January 1, 2000. This revenue contributed \$4.5 million (after income taxes of \$3.0 million) and \$6.5 million (after income taxes of \$4.4 million) to net income for the three months ended September 30, 2002 and 2001, respectively.

For the nine months ended September 30, 2002 and 2001, Nasdaq recognized \$24.9 million and \$34.9 million in revenue, respectively, that was included in the cumulative effect adjustment as of January 1, 2000. This revenue contributed \$15.1 million (after income taxes of \$9.8 million) and \$20.9 million (after income taxes of \$14.0 million) to net income for the nine months ended September 30, 2002 and 2001, respectively.

### 4. Deferred Revenue

Nasdaq's deferred revenue as of September 30, 2002 related to Corporate Client Group Services fees will be recognized in the following years:

|                     | Initial                       | LAS              | Annual and<br>Other | Total             |
|---------------------|-------------------------------|------------------|---------------------|-------------------|
|                     | <i>(amounts in thousands)</i> |                  |                     |                   |
| Fiscal year ended:  |                               |                  |                     |                   |
| 2002                | \$ 8,101                      | \$ 9,472         | \$ 25,078           | \$ 42,651         |
| 2003                | 29,866                        | 32,820           | ¾                   | 62,686            |
| 2004                | 25,140                        | 22,268           | ¾                   | 47,408            |
| 2005                | 18,835                        | 12,382           | ¾                   | 31,217            |
| 2006 and thereafter | 13,395                        | 2,094            | ¾                   | 15,489            |
|                     | <u>\$ 95,337</u>              | <u>\$ 79,036</u> | <u>\$ 25,078</u>    | <u>\$ 199,451</u> |

Nasdaq's deferred revenue for the nine months ended September 30, 2002 and 2001 are reflected in the following tables. The additions reflect Corporate Client Group Service fees charged during the period while the amortization reflects the Corporate Client Group Services revenues recognized during the period based on the accounting methodology described in Note 3 above.

|                               | Initial                       | LAS              | Annual and<br>Other | Total             |
|-------------------------------|-------------------------------|------------------|---------------------|-------------------|
|                               | <i>(amounts in thousands)</i> |                  |                     |                   |
| Balance at January 1, 2002    | \$ 104,629                    | \$ 82,424        | \$ —                | \$ 187,053        |
| Additions                     | 15,907                        | 24,854           | 103,752             | 144,513           |
| Amortization                  | (25,199)                      | (28,242)         | (78,674)            | (132,115)         |
| Balance at September 30, 2002 | <u>\$ 95,337</u>              | <u>\$ 79,036</u> | <u>\$ 25,078</u>    | <u>\$ 199,451</u> |

|                               | Initial                       | LAS              | Annual and<br>Other | Total             |
|-------------------------------|-------------------------------|------------------|---------------------|-------------------|
|                               | <i>(amounts in thousands)</i> |                  |                     |                   |
| Balance at January 1, 2001    | \$ 127,693                    | \$ 76,651        | \$ —                | \$ 204,344        |
| Additions                     | 10,195                        | 26,453           | 83,706              | 120,354           |
| Amortization                  | (26,965)                      | (26,781)         | (62,717)            | (116,463)         |
| Balance at September 30, 2001 | <u>\$ 110,923</u>             | <u>\$ 76,323</u> | <u>\$ 20,989</u>    | <u>\$ 208,235</u> |

### 5. Long-term Debt and Credit Arrangements

During the nine months ended September 30, 2002, Nasdaq's long-term senior notes increased by \$ 151.6 million to \$ 200.1 million. On May 9, 2002, Nasdaq issued and sold \$150.0 million senior notes, which bear interest at 5.83%, in a private placement. These senior notes are due May 9, 2007. Long-term

Long-term subordinated notes reflects \$240.0 million of 4.0% convertible subordinated notes due 2006 (the "Subordinated Notes") issued and sold to Hellman & Friedman Capital Partners IV, L.P. and certain of its affiliated limited partnerships (collectively, "Hellman & Friedman") during 2001. The annual 4.0% coupon will be payable in arrears in cash and the Subordinated Notes are convertible at any time into an aggregate of 12.0 million shares of Common Stock at \$20.00 per share, subject to adjustment, in general, for any stock split, dividend, combination, recapitalization or other similar event. On an as-converted basis as of September 30, 2002, Hellman & Friedman owned an approximate 13.9% equity interest in Nasdaq.

On August 29, 2002, Nasdaq entered into an unsecured revolving-credit facility, which is syndicated to five banks. The Facility makes \$150.0 million available to Nasdaq for a 364-day term for general corporate purposes. At September 30, 2002, Nasdaq had not utilized this Facility, and the entire \$150.0 million of the Facility was available. (See Note 2, Significant Transactions, for further discussion.)

Statement of Financial Accounting Standards No. 34, "Capitalization of Interest Cost" ("SFAS 34"), requires the capitalization of interest as part of the historical cost of acquiring assets, generally those assets that require a period of time to get them ready for their internal use. AICPA Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use", includes interest costs incurred while developing internal-use software as capitalizable costs under SFAS 34. As the effect of capitalization of interest cost related to the development of internal-use software is not material when compared with the effect of expensing these interest costs as incurred, all interest costs have been expensed.

## 6. Goodwill and Intangible Assets

In the first quarter of fiscal year 2002, Nasdaq adopted SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). Under SFAS 142, goodwill and intangible assets deemed to have indefinite lives are no longer amortized but are tested for impairment at least annually.

At September 30, 2002, Nasdaq had goodwill of \$10.1 million related to its acquisitions of Nasdaq Europe and Nasdaq Tools. During the first quarter of 2002, Nasdaq completed the initial transitional goodwill impairment test as required. No impairment of goodwill was recognized as a result of this initial impairment test.

Intangible assets with a definite life continue to be amortized over the estimated useful life. At September 30, 2002 and December 31, 2001, Nasdaq has intangible assets of \$7.4 million and \$9.3 million (net of accumulated amortization of \$6.5 million and \$4.6 million), respectively.

Through December 31, 2001, goodwill was amortized over periods of five to 10 years on a straight-line basis. The following table presents a reconciliation of the reported net income and earnings per share to the amounts adjusted for the exclusion of goodwill amortization, net of the related income tax effect:

|                                 | Three months ended                           |                       | Nine months ended     |                       |
|---------------------------------|--|-----------------------|-----------------------|-----------------------|
|                                 | September 30,<br>2002                        | September 30,<br>2001 | September 30,<br>2002 | September 30,<br>2001 |
|                                 | <i>(in thousands, except per share data)</i> |                       |                       |                       |
| Reported net income             | \$ 12,711                                    | \$ 7,945              | \$ 42,808             | \$ 53,720             |
| Add back: Goodwill amortization | —  | 268                   | —                     | 731                   |
| Adjusted net income             | \$ 12,711                                    | \$ 8,213              | \$ 42,808             | \$ 54,451             |
| Basic earnings per share:       |  |                       |                       |                       |
| Reported net income             | \$ 0.13                                      | \$ 0.07               | \$ 0.42               | \$ 0.45               |
| Add back: Goodwill amortization | —  | —                     | —                     | 0.01                  |
| Adjusted net income             | \$ 0.13                                      | \$ 0.07               | \$ 0.42               | \$ 0.46               |
| Diluted earnings per share:     |  |                       |                       |                       |
| Reported net income             | \$ 0.13                                      | \$ 0.07               | \$ 0.40               | \$ 0.44               |
| Add back: Goodwill amortization | —  | —                     | —                     | 0.01                  |
| Adjusted net income             | \$ 0.13                                      | \$ 0.07               | \$ 0.40               | \$ 0.45               |

## 7. Commitments and Contingencies

On September 25, 2002, Nasdaq approved a funding commitment of €16 million to finance the operations of Nasdaq Europe for the remainder of 2002 and all of 2003. In addition, as of September 30, 2002, Nasdaq has funded in the form of a loan, €10 million. During the fourth quarter of 2002 Nasdaq will fund an additional €5.8 million also in the form of a loan, to enable Nasdaq Europe to invest in Nasdaq Deutschland AG, a partnership among Nasdaq Europe, several German banks and two regional German exchanges (See Note 10, Subsequent Events, for further discussion). The aggregate amount of these loans will be converted from debt to equity in 2003 if all or substantially all our European strategic partners convert their debt to equity as well.

Nasdaq has agreed to guarantee the provision of certain support and maintenance services for the trading platform to be operated by Nasdaq Deutschland AG in the event Nasdaq Europe no longer provides such services due to circumstances including its liquidation or winding down. Nasdaq's obligation to provide services would continue for a period of 18 months from the date the guarantee is triggered, but in no event longer than three years from the date trading begins on the Nasdaq Deutschland exchange. Nasdaq will be obligated to perform under the guarantee only if Nasdaq Deutschland satisfies certain conditions, including minimum quarterly order flow requirements for periods starting in the fourth quarter of 2003. Nasdaq estimates the maximum cost of providing the services at €14.7 million over the term of the guarantee.

On June 1, 2001, Nasdaq signed an agreement with the London International Financial Futures and Options Exchange creating NQLX, a U.S. joint venture company to list and trade single stock futures. Nasdaq made \$2.0 million of capital contributions to the NQLX joint venture in 2001. During the nine months ended September 30, 2002, Nasdaq made additional contributions to NQLX of \$13.0 million. During the fourth quarter of 2002, \$3.0 million is expected to be contributed and an additional \$7.0 million is expected to be contributed in 2003, which will fulfill Nasdaq's Board's initial approval of \$25.0 million. For the nine months ended September 30, 2002, Nasdaq recorded losses of approximately \$6.5 million representing its share of the losses incurred by NQLX.

Nasdaq has agreed to fund a portion of the necessary expenses related to the separation of software, hardware, and data under a plan to transition technology applications and support from Nasdaq to Amex. The NASD originally integrated certain Nasdaq and Amex technology following the NASD's 1998 acquisition of Amex. The total estimated cost of the separation has been established at a maximum of \$29.0 million, and is to be shared evenly between Nasdaq and the NASD. In 2001, Nasdaq accrued \$9.2 million under this commitment and expects to fund this commitment up to \$14.5 million in the future. As of September 30, 2002, \$3.7 million has been paid to Amex.

Nasdaq may be subject to claims arising out of the conduct of its business. Currently, there are certain legal proceedings pending against Nasdaq. Nasdaq believes, based upon the opinion of counsel, that any liabilities or settlements arising from these proceedings will not have a material effect on the financial position or results of operations of Nasdaq. Management is not aware of any unasserted claims or assessments that would have a material adverse effect on the financial position and the results of operations of Nasdaq.

## 8. Comprehensive Income

Comprehensive income is calculated in accordance with SFAS No. 130, "Reporting Comprehensive Income." Comprehensive income is composed of net income and other comprehensive income, which includes the after-tax change in unrealized gains and losses on available-for-sale securities and foreign currency translation adjustments. The following table outlines the components of other comprehensive income for the three and nine months ended September 30, 2002 and 2001:

|  | Three months ended            |                    | Nine months ended  |                    |
|--|-------------------------------|--------------------|--------------------|--------------------|
|  | September 30, 2002            | September 30, 2001 | September 30, 2002 | September 30, 2001 |
|  | <i>(amounts in thousands)</i> |                    |                    |                    |
| Net income   | \$ 12,711                     | \$ 7,945           | \$ 42,808          | \$ 53,720          |
| Unrealized (losses) gains on available-for-sale securities | (2,429)                       | 927                | (4,938)            | 1,615              |
| Foreign currency translation adjustment                    | 1,145                         | 2,392              | 5,627*             | (529)              |
| Total comprehensive income                                 | \$ 11,427                     | \$ 11,264          | \$ 43,497          | \$ 54,806          |

\* Approximately \$2.4 million of foreign currency translation loss has been recognized in the "Nasdaq Japan impairment loss" line item on the Condensed Consolidated Statements of Income. (See Note 2, Significant Transactions, for further discussion).

## 9. Capital Stock and Earnings Per Share

The following table sets forth the computation of basic and diluted earnings per share.

|  | Three months ended   |                    | Nine months ended  |                    |
|--|--|--------------------|--------------------|--------------------|
|  | September 30, 2002   | September 30, 2001 | September 30, 2002 | September 30, 2001 |
|  | <i>(amounts in thousands, except share and per share data)</i> |                    |                    |                    |
| <b>Numerator:</b>                                    |  |                    |                    |                    |
| Net income   | \$ 12,711  | \$ 7,945           | \$ 42,808          | \$ 53,720          |
| Accretion of preferred stock dividends               | (2,441)  | $\frac{3}{4}$      | (7,323)            | $\frac{3}{4}$      |
| Net income applicable to common stockholders         | \$ 10,270  | \$ 7,945           | \$ 35,485          | \$ 53,720          |
| Numerator for basic earnings per share               | \$ 10,270  | \$ 7,945           | \$ 35,485          | \$ 53,720          |
| Interest impact of convertible debt, net of tax      | 1,459  | $\frac{3}{4}$      | 4,376              | 2,162              |
| Numerator for diluted earnings per share             | \$ 11,729  | \$ 7,945           | \$ 39,861          | \$ 55,882          |
| <b>Denominator:</b>                                  |  |                    |                    |                    |
| Weighted average shares                              | 78,171,172   | 110,433,331        | 85,492,136         | 119,314,785        |
| Denominator for basic earnings per share             | 78,171,172   | 110,433,331        | 85,492,136         | 119,314,785        |
| Effect of dilutive securities:                       |  |                    |                    |                    |
| Warrants   | $\frac{3}{4}$  | $\frac{3}{4}$      | 16,845             | $\frac{3}{4}$      |
| Employee stock options                               | 55,966   | $\frac{3}{4}$      | 806,337            | $\frac{3}{4}$      |
| Employee restricted stock                            | 189,863  | 140,087            | 211,220            | 90,336             |
| Convertible debt assumed converted into Common Stock | 12,000,000   | $\frac{3}{4}$      | 12,000,000         | 6,593,407          |
| Denominator for diluted earnings per share           | 90,417,001   | 110,573,418        | 98,526,538         | 125,998,528        |
| Basic earnings per share                             | \$ 0.13  | \$ 0.07            | \$ 0.42            | \$ 0.45            |
| Diluted earnings per share                           | \$ 0.13  | \$ 0.07            | \$ 0.40            | \$ 0.44            |

For the three and nine-month period ended September 30, 2002, the Subordinated Notes were assumed to be converted into 12,000,000 shares of Common Stock, on a weighted average basis, since basic earning per share exceeded interest (net of tax) per share obtainable upon conversion.

Options to purchase 11,216,937 shares of Common Stock and 479,648 shares of Common Stock underlying warrants issued by Nasdaq were outstanding at September 30, 2002. For the three month period ended September 30, 2002, 922,114 of the options outstanding were included in the computation of diluted earnings per share, on a weighted average basis, as their inclusion was dilutive. The remaining options and all the shares underlying the warrants issued by Nasdaq were considered antidilutive and were properly excluded. For the nine month period ended September 30, 2002, 11,006,837 of the options outstanding and 239,824 of the shares underlying the warrants were included in the computation of diluted earnings per share, on a weighted average basis, as their inclusion was dilutive. The remaining options and shares underlying the warrants were considered antidilutive and were properly excluded.

## 10. Subsequent Events

### *SuperMontage*

The Nasdaq Order Display Facility (“SuperMontage<sup>SM</sup>”) successfully completed user acceptance testing and, as of July 29, 2002, went into production launch, trading 32 test securities listed on The Nasdaq Stock Market. On August 28, 2002, the SEC voted unanimously to allow SuperMontage to commence operation. Under the terms of the agreement, SuperMontage became fully operational on October 14, 2002. On October 14, 2002, five securities began trading on SuperMontage. Nasdaq plans to phase in trading of additional securities each week, until all Nasdaq Stock Market listed securities are traded on SuperMontage<sup>SM</sup> by early December of 2002.

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SuperMontage is intended to attract more orders and quotes to The Nasdaq Stock Market by providing a comprehensive display of interest at the inside market and four other price levels away, thus increasing competition and market transparency. SuperMontage has been released in a competitive environment, with at least one electronic communication network (“ECN”) quoting through the Alternative Display Facility (“ADF”), operated by the NASD, rather than SuperMontage. Any decision by other market participants to quote through the ADF could have a negative impact on Nasdaq’s share of quotes and trades in securities listed on The Nasdaq Stock Market.

On or about October 7, 2002, Domestic Securities, Inc. (“Domestic”) filed a petition and request for expedited consideration in the United States Court of Appeals for the District of Columbia for judicial review of an Order of the SEC, dated August 29, 2002. In its August 29, 2002 Order, the SEC found that the ADF satisfied the conditions set forth in the SEC’s Order of January 19, 2001 approving Nasdaq’s proposed rule changes relating to the creation of SuperMontage. In its petition, Domestic challenges the ADF as an inadequate alternative to SuperMontage and contends that the so-called “decrementation” feature of SuperMontage discriminates against ECNs. On October 21, 2002, the SEC filed its opposition to that motion. On October 30, 2002, Nasdaq filed a motion to intervene as a party-respondent in the matter. Although the matter is in its early stages, Nasdaq believes the SEC has good and meritorious defenses to the petition.

### *Nasdaq Deutschland*

On October 30, 2002, Nasdaq’s subsidiary, Nasdaq Europe, and the Berlin and Bremen Stock Exchanges, as well as comdirekt bank, Commerzbank and Dresdner Bank, signed definitive agreements to recapitalize Bremer Wertpapierbörse AG, a German stock exchange, that will be rebranded as Nasdaq Deutschland AG and that will be marketed under the Nasdaq brand. This exchange, which will be subject to the German public law entity resulting from the merger of the Bremen Stock Exchange and the Berlin Stock Exchange, will initially be majority-owned by Nasdaq Europe and is currently anticipated to begin trading in large capitalization international and growth stocks in the second quarter of 2003. Nasdaq has agreed to guarantee the provision of certain support and maintenance services for Nasdaq Deutschland’s trading platform for a limited period in certain circumstances if Nasdaq Europe no longer provides such services (See Note 7, Commitments and Contingencies, for further discussion).

### *Reduction in Force*

In October 2002, Nasdaq announced plans to reduce the size of its workforce by 7-10% during the fourth quarter of 2002. Nasdaq anticipates booking expenses associated with staff reductions in the fourth quarter.

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## **The Nasdaq Stock Market, Inc.**

### **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion of the financial condition and results of operations of Nasdaq should be read in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q.

#### **Business Environment**

The third quarter of 2002 continued to be a difficult period for the United States and global equity markets. The stagnant economy, disappointing earnings announcements and several ongoing investigations into the accounting practices of public companies furthered the downward pressure on share prices. All of the major stock indices fell sharply this quarter, with the Nasdaq Composite shedding almost 20% of its value to 1,172 and the S&P 500 dropping 17.6% to 815. The securities industry continued to face staff reductions that led to reduced demand or slower growth for a variety of Nasdaq services related to trading, system access, market information and data products. As a result of adverse market conditions, Nasdaq’s third quarter revenues dipped slightly from second quarter 2002 levels, but still exceeded revenues in the third quarter of 2001.

The Nasdaq Stock Market's average daily volume fell 5.8% from the second quarter of 2002 to 1.72 billion shares, yet increased 5.3% compared to the third quarter of 2001. Historically, trading is lightest in the third quarter of each year. Nasdaq volume would be even higher than reported were it not for a technical change in agency trade reporting by institutional broker-dealers in 2002. These market participants have started charging clients an explicit commission (as opposed to the traditional net price) and this change results in lower share volume. However, underlying trading activity is unchanged in this situation, therefore, the change to agency trade reporting does not have a correspondingly large impact on Nasdaq's revenue. The total number of companies listed on The Nasdaq Stock Market fell 3.0% from the prior quarter to 3,765, largely because of regulatory delistings and merger and acquisition activity. Initial public offerings ("IPOs") on The Nasdaq Stock Market decreased in the third quarter due to the negative market environment. There were six IPOs in the third quarter of 2002, 45% fewer than in the third quarter of 2001 and well below historic levels of new companies listing on The Nasdaq Stock Market.

The uncertainty of an economic recovery in 2002, coupled with investor concerns about corporate governance and high-profile scandals, makes it difficult to predict when the domestic economy will show sustained improvement. These same concerns suggest that United States equity markets will face continued volatility and decreased volume, at least in the short term.

### Change in Accounting Principle

On August 17, 2001, Nasdaq concluded discussions with the SEC with respect to the implementation in its financial statements of SAB 101. SAB 101 became effective for SEC public reporting companies in the fourth quarter of 2000. Nasdaq became an SEC public reporting company on June 29, 2001, the effective date of its Registration Statement on Form 10. As a result of the discussions with the SEC, Nasdaq changed its method of accounting for revenue recognition for certain components of its Corporate Client Group Services revenues.

In accordance with accounting principles generally accepted in the United States, as SAB 101 was adopted effective the fourth quarter of 2000, the change in accounting principle has been applied as of January 1, 2000. In accordance with applicable accounting guidance prior to SAB 101, Nasdaq recognized revenue for issuer initial listing fees and LAS fees in the month the listing occurred or in the period additional shares were issued, respectively. Nasdaq now recognizes revenue related to initial listing fees and LAS fees on a straight line basis over estimated service periods, which are six and four years, respectively.

For the three months ended September 30, 2002 and 2001, Nasdaq recognized \$7.5 million and \$10.9 million in revenue, respectively, that was included in the cumulative effect adjustment as of January 1, 2000. This revenue contributed \$4.5 million (after income taxes of \$3.0 million) and \$6.5 million (after income taxes of \$4.4 million) to net income for the three months ended September 30, 2002 and 2001, respectively.

For the nine months ended September 30, 2002 and 2001, Nasdaq recognized \$24.9 million and \$34.9 million in revenue, respectively, that was included in the cumulative effect adjustment as of January 1, 2000. This revenue contributed \$15.1 million (after income taxes of \$9.8 million) and \$20.9 million (after income taxes of \$14.0 million) to net income for the nine months ended September 30, 2002 and 2001, respectively.

## Results of Operations

### For the Three Months Ended September 30, 2002 and September 30, 2001

**Financial Overview.** Nasdaq reported net income of \$12.7 million for the quarter ended September 30, 2002 compared with \$7.9 million for the quarter ended September 30, 2001, an increase of \$4.8 million or 60.8%. Nasdaq's financial position can vary due to a number of factors discussed throughout this "Management's Discussion and Analysis of Financial Conditions and Results of Operation" and in "Item 1. Business -Risk Factors" as filed in Nasdaq's Annual Report on Form 10-K for the year ended December 31, 2001, as amended. The following table sets forth an overview of Nasdaq's financial results:

|  | Three months ended<br>September 30,           |          |
|--|---|----------|
|  | 2002  | 2001     |
|  | (\$ in millions, except per<br>share amounts) |          |
| Total revenue                                | \$ 199.1                                      | \$ 197.7 |
| Total expenses                               | 173.6   | 190.9    |
| Net income before taxes                      | 24.9  | 13.6     |
| Net income                                   | 12.7  | 7.9      |
| Net income applicable to common stockholders | 10.3  | 7.9      |
| Basic earnings per common share              | 0.13  | 0.07     |
| Diluted earnings per common share            | 0.13  | 0.07     |
| Return on average common equity              | 7.9%  | 1.5%     |

### Revenue

For the quarter ended September 30, 2002, Nasdaq's revenues were \$199.1 million compared with \$197.7 million for the quarter ended September 30, 2001, an increase of \$1.4 million or 0.7%.

The following table sets forth total revenue:

|                                 | Three months ended<br>September 30, |          |
|---------------------------------|-------------------------------------|----------|
|                                 | 2002                                | 2001     |
|                                 | (\$ in millions)                    |          |
| Transaction Services            | \$ 93.9                             | \$ 86.2  |
| Market Information Services     | 49.1                                | 58.2     |
| Corporate Client Group Services | 44.2                                | 39.4     |
| Other                           | 11.9                                | 13.9     |
| Total Revenue                   | \$ 199.1                            | \$ 197.7 |

### Transaction Services

The following table sets forth the revenue from Transaction Services:

|   | Three months ended<br>September 30, |                |
|---|-------------------------------------|----------------|
|   | 2002                                | 2001           |
|   | (\$ in millions)                    |                |
| Access Services                           | \$ 35.4                             | \$ 42.6        |
| Execution Services                        | 37.0                                | 25.0           |
| Trade Reporting                           | 19.9                                | 18.6           |
| Other Transaction Services Revenue        | 1.6                                 | —              |
| <b>Total Transaction Services Revenue</b> | <b>\$ 93.9</b>                      | <b>\$ 86.2</b> |

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For the quarter ended September 30, 2002, Transaction Services revenue was \$93.9 million compared with \$86.2 million for the quarter ended September 30, 2001, an increase of \$7.7 million or 8.9%.

Access Services revenue was \$35.4 million for the quarter ended September 30, 2002 compared with \$42.6 million for the quarter ended September 30, 2001, a decrease of \$7.2 million or 16.9% primarily due to cost saving initiatives among Nasdaq's market participants and the consolidation of major trading firms, which resulted in fewer subscriber log-ons to Nasdaq systems. Access Services revenue is derived from Nasdaq Workstation II and Application Programming Interfaces, Computer-to-Computer Interface ("CTCI"), Nasdaq Tools and Weblink.

The Nasdaq Workstation II, along with Application Programming Interfaces, is the trader's direct connection to Nasdaq's quote and trade execution facilities, providing access to quotation services, automated trade executions, real-time reporting, trade negotiations and clearing. These access devices provided revenues of \$30.1 million for the quarter ended September 30, 2002 compared with \$36.9 million for the quarter ended September 30, 2001, a decrease of \$6.8 million or 18.4%. This decrease was primarily due to a decrease in the number of trader log-ons, reflecting the downturn in the market environment and market participant consolidations. Nasdaq Workstation II fees are charged monthly based upon the number of authorized log-on identifications.

Nasdaq provides CTCI for users to report trades, enter orders into SuperSoes<sup>SM</sup> and receive execution messages. CTCI links market participants' automated systems to Nasdaq. This interface has recently been upgraded to a new protocol and delivers increased line speeds. CTCI provided revenues of \$4.1 million for the quarter ended September 30, 2002 compared with \$4.0 million for the quarter ended September 30, 2001, an increase of \$0.1 million or 2.5%. Users are charged a monthly fee based upon the bandwidth of the line.

Nasdaq Tools revenue totaled \$0.8 million for the quarter ended September 30, 2002 compared with \$1.6 million for the quarter ended September 30, 2001, a decrease of \$0.8 million or 50.0%. This decrease was primarily due to the downturn in the market environment and market participant consolidations. Nasdaq Tools provides software products and services related to the broker-dealer industry to be used in conjunction with Nasdaq Workstation II software. (See Note 2, Significant Transactions, for further discussion.)

Also included in Access Services revenue is Weblink, which totaled \$0.4 million for the quarter ended September 30, 2002 compared with \$0.1 million for the quarter ended September 30, 2001, an increase of \$0.3 million. Weblink is a web-based product that provides access to the Automated Confirmation Transaction ("ACT") system and Advanced Computerized Execution System ("ACES"). Prior to April 1, 2002, this revenue was disclosed as Other Transaction Services revenue. As such, prior period amounts have been reclassified to conform to the current period presentation of Weblink revenue. Weblink fees are charged monthly based upon the number of authorized log-on identifications.

Execution Services revenue totaled \$37.0 million for the quarter ended September 30, 2002 compared with \$25.0 million for the quarter ended September 30, 2001, an increase of \$12.0 million or 48.0% primarily due to revised pricing for SuperSoes, including the introduction of a new, incremental fee associated with quote updates in Nasdaq quotation systems. Execution Services revenue is derived from SuperSoes, SelectNet<sup>®</sup>, SOES<sup>SM</sup>, Quote Update, ACES and Computer Assisted Execution System<sup>SM</sup> ("CAES").

On July 30, 2001, the implementation of SuperSoes was completed. SuperSoes is designed to provide capability for automatic execution of buy and sell orders for market makers, electronic communication networks ("ECNs") and institutional and retail customers, and streamlines Nasdaq's transaction systems. SuperSoes combines features of the existing SelectNet and SOES execution systems and is only available for securities listed on The Nasdaq National Market<sup>SM</sup> tier of The Nasdaq Stock Market. Securities listed on The Nasdaq SmallCap Market<sup>SM</sup> continue to be traded through SOES and SelectNet. SuperSoes has resulted in the migration of significant transaction volume, and its corresponding revenue, from SelectNet and SOES to SuperSoes. On February 1, 2002 Nasdaq introduced a fee charged to market participants for updating quotes on The Nasdaq Stock Market. SuperSoes revenues and quote update fees were \$28.1 million for the quarter ended September 30, 2002. SuperSoes charges execution fees on a per share basis.

The SelectNet execution system provided revenue of \$7.0 million for the quarter ended September 30, 2002 compared with \$12.2 million for the quarter ended September 30, 2001, a decrease of \$5.2 million or 42.6%. This decrease was primarily due to a decrease in trade volume related to the introduction of SuperSoes and ECNs' increased buildout of direct links to customers. SelectNet fees are charged on a per transaction basis.

During the quarter ended September 30, 2001, SOES provided revenue of \$3.0 million. Due to the migration to SuperSoes, revenue from SOES decreased and accounted for less than 1% of revenue for the quarter ended September 30, 2002.

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Also included in Execution Services revenue is revenue from ACES and CAES, which totaled \$1.9 million for the quarter ended September 30, 2002 compared with \$1.6 million for the quarter ended September 30, 2001, an increase of \$0.3 million or 18.8%. ACES is an order routing tool which routes orders directly between market participants. CAES is an automatic and order delivery execution system for NYSE and Amex-listed securities. Prior to April

1, 2002, this revenue was disclosed as Other Transaction Services revenue. As such, prior period amounts have been reclassified to conform to the current period presentation of ACES and CAES revenues.

Trade Reporting revenue totaled \$19.9 million for the quarter ended September 30, 2002 compared with \$18.6 million for the quarter ended September 30, 2001, an increase of \$1.3 million or 7.0%. The increase was primarily due to an increase in market share among ECNs that report their trades to Nasdaq and a temporary increase in trade volume in one security listed on The Nasdaq National Market that was subsequently delisted in the third quarter ended September 30, 2002. Revenue from Trade Reporting includes ACT, an automated service that provides the post-execution steps of price reporting, volume comparison, clearing of pre-negotiated trades, and risk management services. ACT fees are primarily charged on a per transaction basis.

#### Market Information Services

The following table sets forth the revenue from Market Information Services:

|   | Three months ended<br>September 30, |                |
|---|-------------------------------------|----------------|
|   | 2002                                | 2001           |
|   | (\$ in millions)                    |                |
| Level 1 Service                                 | \$ 34.4                             | \$ 38.6        |
| Nasdaq Quotation Dissemination Service ("NQDS") | 8.5                                 | 10.6           |
| Nasdaq InterMarket Tape                         | 8.4                                 | 6.6            |
| Unlisted Trading Privileges ("UTP")             | (4.7)                               | (1.1)          |
| Other Market Information Services Revenue       | 2.5                                 | 3.5            |
| Total Market Information Services Revenue       | <u>\$ 49.1</u>                      | <u>\$ 58.2</u> |

For the quarter ended September 30, 2002, Market Information Services revenue was \$49.1 million compared with \$58.2 million for the quarter ended September 30, 2001, a decrease of \$9.1 million or 15.6%.

Nasdaq's Level 1 service provides last trade and current inside quote information for securities listed on The Nasdaq Stock Market. Level 1 revenue totaled \$34.4 million for the quarter ended September 30, 2002 compared with \$38.6 million for the quarter ended September 30, 2001, a decrease of \$4.2 million or 10.9%. The decrease was primarily due to declines in professional and non-professional Level 1 subscriptions. Prior to April 1, 2002, certain Level 1 subscriptions that were included in the bundled NQDS data product were disclosed as NQDS revenues. Prior period amounts have been reclassified to conform to the current period presentation of revenue for Level 1 and NQDS.

NQDS provides subscribers with the best quote from each Nasdaq market participant. NQDS revenues totaled \$8.5 million for the quarter ended September 30, 2002 compared with \$10.6 million for the quarter ended September 30, 2001, a decrease of \$2.1 million or 19.8% primarily due to a decrease in professional and non-professional subscriptions. Prior to April 1, 2002, certain Level 1 subscriptions that were included in the bundled NQDS data product were disclosed as NQDS revenues. Prior period amounts have been reclassified to conform to the current period presentation of revenue for Level 1 and NQDS.

Nasdaq InterMarket tape revenue is derived from data revenue generated by the Consolidated Quotation Plan and the Consolidated Tape Association Plan (collectively, "CQ/CTA Plans"). The information collected under the CQ/CTA Plans is sold to data vendors, who in turn sell it to the public. Nasdaq's InterMarket tape revenue is directly related to both its percentage of trades in exchange listed securities that are reported through the CQ/CTA Plans and the size of the revenue sharing pool. Nasdaq InterMarket tape revenue totaled \$8.4 million for the quarter ended September 30, 2002 compared with \$6.6 million for the quarter ended September 30, 2001, an increase of \$1.8 million or 27.3%, primarily due to an increase in the total Nasdaq InterMarket transactions reported in exchange-listed securities.

Nasdaq shares revenue from the sale of tape data through the UTP Plan. Under the UTP Plan, Nasdaq shares revenue with regional exchanges that are members of the UTP Plan and that trade Nasdaq securities. UTP participants are paid based on the total shares and trades that they execute as a percentage of all shares and trades executed in securities listed on The Nasdaq Stock Market. Nasdaq revenue sharing with UTP participants totaled \$4.7 million for the quarter ended September 30, 2002 compared with \$1.1 million for the quarter ended September 30, 2001, an increase of \$3.6 million. The increase is due primarily to the trade reporting activity from the Cincinnati Stock Exchange, which became an active UTP participant at the end of the first quarter of 2002.

#### Corporate Client Group Services

The following table sets forth the revenue from Corporate Client Group Services:

|   | Three months ended<br>September 30, |                |
|---|-------------------------------------|----------------|
|   | 2002                                | 2001           |
|   | (\$ in millions)                    |                |
| Annual renewal fee                            | \$ 25.9                             | \$ 21.0        |
| Listing additional shares ("LAS") fee         | 9.4                                 | 8.9            |
| Initial listing fee                           | 8.4                                 | 9.0            |
| Other Corporate Client Group Services Revenue | 0.5                                 | 0.5            |
| Total Corporate Client Group Services Revenue | <u>\$ 44.2</u>                      | <u>\$ 39.4</u> |

For the quarter ended September 30, 2002 Corporate Client Group Services revenue was \$44.2 million compared with \$39.4 million for the quarter ended September 30, 2001, an increase of \$4.8 million or 12.2%.

Corporate Client Group Services revenues are primarily derived from fees for annual renewal, LAS and initial listings for companies listed on The Nasdaq Stock Market. Fees are generally calculated based upon total shares outstanding for the issuing company. These fees are initially deferred and amortized over the estimated periods for which the services are provided. Revenues from initial listings fees and LAS fees are amortized over six and four years, respectively, and annual fees are amortized on a pro-rata basis over the calendar year.

Annual renewal fee revenue totaled \$25.9 million for the quarter ended September 30, 2002 compared with \$21.0 million for the quarter ended September 30, 2001, an increase of \$4.9 million or 23.3%. This increase was primarily due to the introduction in January 2002 of a revised fee structure for annual renewal fees.

LAS revenue totaled \$9.4 million for the quarter ended September 30, 2002 compared with \$8.9 million for the quarter ended September 30, 2001, an increase of \$0.5 million or 5.6%. On a billed basis, LAS fees totaled \$4.4 million for the quarter ended September 30, 2002 compared with \$7.1 million for the quarter ended September 30, 2001, a decrease of \$2.7 million or 38.0% primarily due to a decrease in the number of secondary offerings from 32 in the third quarter of 2001 to 15 in the third quarter of 2002.

Initial listing revenues totaled \$8.4 million for the quarter ended September 30, 2002 compared with \$9.0 million for the quarter ended September 30, 2001, a decrease of \$0.6 million or 6.7%. On a billed basis, initial listing fees totaled \$5.0 million for the quarter ended September 30, 2002 compared with \$2.2 million for the quarter ended September 30, 2001, an increase of \$2.8 million, primarily due to an increase in initial listing fees implemented in January 2002. The number of IPOs listings on The Nasdaq Stock Market decreased from 11 companies in the third quarter of 2001 to 6 companies in the third quarter of 2002.

#### Other Revenues

For the quarter ended September 30, 2002, Other Revenue was \$11.9 million compared with \$13.9 million for the quarter ended September 30, 2001, a decrease of \$2.0 million or 14.4%. Other revenues primarily include trademark and licensing revenues related to the Nasdaq-100 Trust ("QQQ") and related products. Nasdaq earns revenues based on the licensing of the Nasdaq brand name for a variety of financial products here and abroad. Among these products are the QQQ, options, futures, mutual funds and a variety of other products. The QQQ is a unit investment trust that holds shares of the top 100 U.S. and international non-financial stocks listed on The Nasdaq Stock Market that comprise the Nasdaq-100 Index. The decrease in Other Revenue is attributable to a decrease in trademark license revenue related to the QQQ occurring outside the Nasdaq InterMarket. The decline in trademark revenue is effectively offset by the higher tape revenue received by Nasdaq InterMarket, which is reflected in Market Information Services, as a result of its increased market share.

#### Direct Expenses

|   | Three months ended<br>September 30, |                 |
|---|-------------------------------------|-----------------|
|   | 2002                                | 2001            |
|   | (\$ in millions)                    |                 |
| Compensation and benefits                   | \$ 51.3                             | \$ 45.3         |
| Marketing and advertising                   | 6.1                                 | 5.9             |
| Depreciation and amortization               | 25.1                                | 22.9            |
| Professional and contract services          | 17.3                                | 22.9            |
| Computer operations and data communications | 35.3                                | 43.9            |
| Provision for bad debts                     | 2.5                                 | 1.5             |
| Travel, meetings, and training              | 2.7                                 | 3.7             |
| Occupancy                                   | 7.5                                 | 6.4             |
| Publications, supplies, and postage         | 2.7                                 | 2.9             |
| Disaster related                            | —                                   | 0.8             |
| Other                                       | 2.0                                 | 10.3            |
| <b>Total direct expenses</b>                | <b>\$ 152.5</b>                     | <b>\$ 166.5</b> |

For the quarter ended September 30, 2002, direct expenses were \$152.5 million compared with \$166.5 million for the quarter ended September 30, 2001, a decrease of \$14.0 million or 8.4%.

Compensation and benefits expense was \$51.3 million for the quarter ended September 30, 2002 compared with \$45.3 million for the quarter ended September 30, 2001, an increase of \$6.0 million or 13.2% primarily due to increased headcount related to internal functions being handled by Nasdaq as a result of the separation from the NASD as well as additional benefit obligations.

Marketing and advertising expense was \$6.1 million for the quarter ended September 30, 2002 compared with \$5.9 million for the quarter ended September 30, 2001, an increase of \$0.2 million or 3.4%.

Depreciation and amortization expense was \$25.1 million for the quarter ended September 30, 2002 compared with \$22.9 million for the quarter ended September 30, 2001, an increase of \$2.2 million or 9.6% primarily due to capacity and technology infrastructure improvements required to support market activity and new initiatives.

Professional and contract services expense was \$17.3 million for the quarter ended September 30, 2002 compared with \$22.9 million for the quarter ended September 30, 2001, a decrease of \$5.6 million or 24.5% primarily due to less reliance on outside contractors, a decrease in development costs associated with SuperMontage, partially offset by an increase in costs associated with Nasdaq's global expansion strategy.

Computer operations and data communications expense was \$35.3 million for the quarter ended September 30, 2002 compared with \$43.9 million for the quarter ended September 30, 2001, a decrease of \$8.6 million or 19.6%. This decrease is the result of a renegotiation of Nasdaq's contract with WorldCom that occurred during 2002.

The provision for bad debts was \$2.5 million for the quarter ended September 30, 2002 compared with \$1.5 million for the quarter ended September 30, 2001, an increase of \$1.0 million or 66.7% primarily due to the continuing erosion of market conditions and increased payment defaults.

Occupancy expense was \$7.5 million for the quarter ended September 30, 2002 compared with \$6.4 million for the quarter ended September 30, 2001, an increase of \$1.1 million or 17.2% primarily due to a re-classification of real estate costs previously recorded in support costs for the quarter ended September 30, 2001 as a result of the separation from the NASD.

Disaster related expenses were \$0.8 million for the quarter ended September 30, 2001. As a result of the terrorist attacks on September 11, 2001, Nasdaq incurred costs of \$0.8 million (\$0.5 million after taxes) in the third quarter of 2001. These expenses primarily consist of costs related to the efforts to restore services to market participants; the testing of the trading system; and the required reconfiguring of technology, telecommunications and alternative office facilities due to the temporary relocation of employees.

The remaining direct expenses were \$7.4 million for the quarter ended September 30, 2002 compared with \$16.9 million for the quarter ended September 30, 2001, a decrease of \$9.5 million or 56.2%. The decrease was primarily due to reduced losses from international operations.

### Support Costs

Support costs from related parties were \$21.1 million for the quarter ended September 30, 2002 compared with \$24.4 million for the quarter ended September 30, 2001, a decrease of \$3.3 million or 13.5%. The decrease reflects Nasdaq's continued move towards less reliance upon support from the NASD and its affiliates. Surveillance and other regulatory charges from NASD Regulation, Inc. ("NASDR") were \$21.4 million for the quarter ended September 30, 2002 compared with \$20.8 million for the quarter ended September 30, 2001, an increase of \$0.6 million or 2.9%. Support costs from the NASD were \$1.3 million for the quarter ended September 30, 2002 compared with \$9.1 million for the quarter ended September 30, 2001, a decrease of \$7.8 million or 85.7%. In addition, the amount of Nasdaq costs charged to the Amex were \$1.6 million for the quarter ended September 30, 2002 compared with \$5.5 million for the quarter ended September 30, 2001, a decrease of \$3.9 million or 70.9%. Amounts charged to related parties are netted against charges from related parties in the "Support costs from related parties, net" line item on the Condensed Consolidated Statements of Income.

### Income Taxes

Nasdaq's income tax provision was \$12.2 million for the quarter ended September 30, 2002 compared to \$5.7 million for the quarter ended September 30, 2001. The effective tax rate was 49.0% for the quarter ended September 30, 2002 compared to 41.9% for the quarter ended September 30, 2001. The increase in Nasdaq's effective tax rate was primarily due to a reduction in tax benefits related to tax preferred investments such as tax exempt interest and dividend received deductions offset by a reduction in foreign losses for which no tax benefit is taken.

### Results of Operations

#### For the Nine Months Ended September 30, 2002 and 2001

**Financial Overview.** Nasdaq reported net income of \$42.8 million for the nine months ended September 30, 2002 compared with \$53.7 million for the quarter ended September 30, 2001, a decrease of \$10.9 million or 20.3%. The following table sets forth an overview of Nasdaq's financial results:

|  | Nine months ended<br>September 30,            |          |
|--|---|----------|
|  | 2002  | 2001     |
|  | (\$ in millions, except per<br>share amounts) |          |
| Total revenue                                | \$ 615.6                                      | \$ 641.8 |
| Total expenses                               | 536.5   | 560.2    |
| Net income before taxes                      | 83.5  | 98.0     |
| Net income                                   | 42.8  | 53.7     |
| Net income applicable to common stockholders | 35.5  | 53.7     |
| Basic earnings per common share              | 0.42  | 0.45     |
| Diluted earnings per common share            | 0.40  | 0.44     |
| Return on average common equity              | 10.9%   | 9.2%     |

### Revenue

For the nine months ended September 30, 2002, Nasdaq's revenues were \$615.6 million compared with \$641.8 million for the nine months ended September 30, 2001, a decrease of \$26.2 million or 4.1%.

The following table sets forth total revenue:

|                                 | Nine months ended<br>September 30, |          |
|---------------------------------|------------------------------------|----------|
|                                 | 2002                               | 2001     |
|                                 | (\$ in millions)                   |          |
| Transaction Services            | \$ 303.9                           | \$ 311.1 |
| Market Information Services     | 150.9                              | 176.9    |
| Corporate Client Group Services | 132.1                              | 116.5    |
| Other                           | 28.7                               | 37.3     |
| Total Revenue                   | \$ 615.6                           | \$ 641.8 |

### Transaction Services

The following table sets forth the revenue from Transaction Services:

|  | Nine months ended<br>September 30, |      |
|--|------------------------------------|------|
|  | 2002                               | 2001 |

|   | (\$ in millions) |                 |
|---|------------------|-----------------|
| Access Services                           | \$ 111.4         | \$ 128.5        |
| Execution Services                        | 126.1            | 113.2           |
| Trade Reporting                           | 61.5             | 65.6            |
| Other Transaction Services Revenue        | 4.9              | 3.8             |
| <b>Total Transaction Services Revenue</b> | <b>\$ 303.9</b>  | <b>\$ 311.1</b> |

For the nine months ended September 30, 2002, Transaction Services revenue was \$303.9 million compared with \$311.1 million for the nine months ended September 30, 2001, a decrease of \$7.2 million or 2.3%.

Access Services revenue was \$111.4 million for the nine months ended September 30, 2002 compared with \$128.5 million for the nine months ended September 30, 2001, a decrease of \$17.1 million or 13.3% primarily due to cost saving initiatives among Nasdaq's market participants and the consolidation of major trading firms, which resulted in fewer subscriber log-ons to Nasdaq systems. Access Services revenue is derived from Nasdaq Workstation II and Application Programming Interfaces, CTCI, Nasdaq Tools and Weblink.

The Nasdaq Workstation II, along with application programming interfaces, is the trader's direct connection to Nasdaq's quote and trade execution facilities, providing access to quotation services, automated trade executions, real-time reporting, trade negotiations and clearing. These access devices provided revenues of \$94.6 million for the nine months ended September 30, 2002 compared with \$111.6 million for the nine months ended September 30, 2001, a decrease of \$17.0 million or 15.2%. This decrease was primarily due to a decrease in the number of trader log-ons, reflecting the downturn in the market environment and market participant consolidations. Nasdaq Workstation II fees are charged monthly based upon the number of authorized log-on identifications.

Nasdaq provides CTCI for users to report trades, enter orders into SuperSoes and receive execution messages. CTCI links market participants' automated systems to Nasdaq. This interface has recently been upgraded to a new protocol and delivers increased line speeds. CTCI provided revenues of \$12.6 million for the nine months ended September 30, 2002 compared with \$11.4 million for the nine months ended September 30, 2001, an increase of \$1.2 million or 10.5%. New fees associated with the upgraded interface and an increase in customers were primarily responsible for the increase in revenue. Users are charged a monthly fee based upon the bandwidth of the line.

Nasdaq Tools revenue totaled \$3.1 million for the nine months ended September 30, 2002 compared with \$5.3 million for the nine months ended September 30, 2001, a decrease of \$2.2 million or 41.5%. This decrease was primarily due to the downturn in the market environment and market participant consolidations. Nasdaq Tools provides software products and services related to the broker-dealer industry to be used in conjunction with Nasdaq Workstation II software. (See Note 2, Significant Transactions, for further discussion.)

Also included in Access Services revenue is Weblink, which totaled \$1.1 million for the nine months ended September 30, 2002 compared with \$0.2 million for the nine months ended September 30, 2001, an increase of \$0.9 million. Weblink is a web-based product that provides access to the ACT and ACES systems. Prior to April 1, 2002, this revenue was disclosed as Other Transaction Services revenue. As such, prior period amounts have been reclassified to conform to the current period presentation of Weblink revenue. Weblink fees are charged monthly based upon the number of authorized log-on identifications.

Execution Services revenue totaled \$126.1 million for the nine months ended September 30, 2002 compared with \$113.2 million for the nine months ended September 30, 2001, an increase of \$12.9 million or 11.4% primarily due to revised pricing for SuperSoes, including the introduction of a new, incremental fee associated with quote updates in Nasdaq quotation systems. Execution Services revenue is derived from SuperSoes, SelectNet, SOES, Quote Update, ACES and CAES.

On July 30, 2001, the implementation of SuperSoes was completed. SuperSoes is designed to provide capability for automatic execution of buy and sell orders for market makers, ECNs and institutional and retail customers, as well as streamline Nasdaq's transaction systems. SuperSoes combines features of the existing SelectNet and SOES execution systems and is only available for securities listed on The Nasdaq National Market tier of The Nasdaq Stock Market. Securities listed on The Nasdaq SmallCap Market continue to be traded through SOES and SelectNet. SuperSoes has resulted in the migration of significant transaction volume, and its corresponding revenue, from SelectNet and SOES to SuperSoes. On February 1, 2002 Nasdaq introduced a fee charged to market participants for updating quotes on The Nasdaq Stock Market. SuperSoes revenues and quote update fees were \$94.3 million for the nine months ended September 30, 2002. SuperSoes charges execution fees on a per share basis.

The SelectNet execution system provided revenue of \$25.7 million for the nine months ended September 30, 2002 compared with \$75.9 million for the nine months ended September 30, 2001, a decrease of \$50.2 million or 66.1%. This decrease was primarily due to a decrease in trade volume related to the introduction of SuperSoes and ECNs' increased buildout of direct links to customers. SelectNet fees are charged on a per transaction basis.

During the nine months ended September 30, 2001, SOES provided revenue of \$22.1 million. Due to the migration to SuperSoes, revenue from SOES decreased and accounted for less than 1% of revenue for the nine months ended September 30, 2002.

Also included in Execution Services revenue is revenue from ACES and CAES, which totaled \$6.1 million for the nine months ended September 30, 2002 compared with \$7.0 million for the nine months ended September 30, 2001, a decrease of \$0.9 million or 12.9%. ACES is an order routing tool which routes orders directly between market participants. CAES is an automatic and order delivery execution system for NYSE and Amex-listed securities. Prior to April 1, 2002, this revenue was disclosed as Other Transaction Services revenue. As such, prior period amounts have been reclassified to conform to the current period presentation of ACES and CAES revenues.

Trade Reporting revenue totaled \$61.5 million for the nine months ended September 30, 2002 compared with \$65.6 million for the nine months ended September 30, 2001, a decrease of \$4.1 million or 6.3%. The decrease was primarily due to the decline in overall share volume, the reporting of trades to regional exchanges, and a pricing decrease for a certain ACT trade reports. Partially offsetting this decline was an increase in market share among ECNs that report their trades to Nasdaq and a temporary increase in trade volume in one security listed on The Nasdaq National Market that was subsequently delisted in the third quarter ended September 30, 2002. Revenue from Trade Reporting includes ACT, an automated service that provides the post-execution steps of price reporting, volume comparison, clearing of pre-negotiated trades, and risk management services. ACT fees are primarily charged on a per transaction basis.

The following table sets forth the revenue from Market Information Services:

|  | Nine months ended<br>September 30, |                 |
|--|------------------------------------|-----------------|
|  | 2002                               | 2001            |
|  | (\$ in millions)                   |                 |
| Level 1 Service                                  | \$ 107.4                           | \$ 118.4        |
| Nasdaq Quotation Dissemination Service ("NQDS")  | 27.5                               | 32.5            |
| Nasdaq InterMarket Tape                          | 29.7                               | 22.1            |
| Unlisted Trading Privileges ("UTP")              | (13.0)                             | (3.7)           |
| Nasdaq Data Revenue Sharing                      | (9.0)                              | —               |
| Other Market Information Services Revenue        | 8.3                                | 7.6             |
| <b>Total Market Information Services Revenue</b> | <b>\$ 150.9</b>                    | <b>\$ 176.9</b> |

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For the nine months ended September 30, 2002, Market Information Services revenue was \$150.9 million compared with \$176.9 million for the nine months ended September 30, 2001, a decrease of \$26.0 million or 14.7%.

Nasdaq's Level 1 service provides last trade and current inside quote information for securities listed on The Nasdaq Stock Market. Level 1 revenue totaled \$107.4 million for the nine months ended September 30, 2002 compared with \$118.4 million for the nine months ended September 30, 2001, a decrease of \$11.0 million or 9.3%. The decrease was primarily due to declines in professional and non-professional Level 1 subscriptions. Prior to April 1, 2002, certain Level 1 subscriptions that were included in the bundled NQDS data product were disclosed as NQDS revenues. Prior period amounts have been reclassified to conform to the current period presentation of revenue for Level 1 and NQDS.

NQDS provides subscribers with the best quote from each Nasdaq market participant. NQDS revenues totaled \$27.5 million for the nine months ended September 30, 2002 compared with \$32.5 million for the nine months ended September 30, 2001, a decrease of \$5.0 million or 15.4% primarily due to a decrease in professional and non-professional subscriptions. Prior to April 1, 2002, certain Level 1 subscriptions that were included in the bundled NQDS data product were disclosed as NQDS revenue. Prior period amounts have been reclassified to conform to the current period presentation of revenue for Level 1 and NQDS.

Nasdaq InterMarket tape revenues are derived from data revenue generated by the Consolidated Quotation Plan and the Consolidated Tape Association Plan (collectively, "CQ/CTA Plans"). The information collected under the CQ/CTA Plans is sold to data vendors, who in turn sell it to the public. Nasdaq's InterMarket tape revenue is directly related to both its percentage of trades in exchange listed securities that are reported through the CQ/CTA Plans and the size of the revenue sharing pool. Nasdaq InterMarket tape revenues totaled \$29.7 million for the nine months ended September 30, 2002 compared with \$22.1 million for the nine months ended September 30, 2001, an increase of \$7.6 million or 34.4% primarily due to an increase in the total Nasdaq InterMarket transactions reported in exchange-listed securities.

Nasdaq shared revenue from the sale of tape data in two manners. First, through the UTP Plan, Nasdaq shares revenue with regional exchanges that are members of the Plan and that trade Nasdaq securities. UTP participants are paid based on the total shares and trades that they execute as a percentage of all shares and trades executed in securities listed on The Nasdaq Stock Market. Nasdaq revenue sharing with UTP Plan participants totaled \$13.0 million for the nine months ended September 30, 2002 compared with \$3.7 million for the nine months ended September 30, 2001, an increase of \$9.3 million. The increase was due primarily to the trade reporting activity from the Cincinnati Stock Exchange, which became an active UTP participant at the end of the first quarter of 2002.

Nasdaq also shared tape data revenue with its market participants in a pilot program based on their share of trades and volume reported to Nasdaq. This revenue sharing plan was introduced in the first quarter of 2002. During the nine months ended September 30, 2002, Nasdaq shared \$9.0 million in tape data revenue with its market participants. The data revenue sharing program was part of a larger strategy to compete with UTP exchanges and provide proper incentive for Nasdaq members to continue to fully utilize Nasdaq's Transaction Services. Effective June 1, 2002, the SEC abrogated certain market participant tape sharing pilot programs. (See Note 2, Significant Transactions, for further discussion).

#### Corporate Client Group Services

The following table sets forth the revenue from Corporate Client Group Services:

|  | Nine months ended<br>September 30, |                 |
|--|------------------------------------|-----------------|
|  | 2002                               | 2001            |
|  | (\$ in millions)                   |                 |
| Annual renewal fee                                   | \$ 77.4                            | \$ 61.6         |
| Listing additional shares (LAS) fee                  | 28.2                               | 26.8            |
| Initial listing fee                                  | 25.2                               | 27.0            |
| Other Corporate Client Group Services Revenue        | 1.3                                | 1.1             |
| <b>Total Corporate Client Group Services Revenue</b> | <b>\$ 132.1</b>                    | <b>\$ 116.5</b> |

For the nine months ended September 30, 2002, Corporate Client Group Services revenues was \$132.1 million compared with \$116.5 million for the nine months ended September 30, 2001, an increase of \$15.6 million or 13.4%.

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Corporate Client Group Services revenues are primarily derived from fees for annual renewal, LAS, and initial listings for companies listed on The Nasdaq Stock Market. Fees are generally calculated based upon total shares outstanding for the issuing company. These fees are initially deferred and amortized

over the estimated periods for which the services are provided. Revenues from initial listings fees and LAS fees are amortized over six and four years, respectively, and annual fees are amortized on a pro-rata basis over the calendar year.

Annual renewal fee totaled \$77.4 million for the nine months ended September 30, 2002 compared with \$61.6 million for the nine months ended September 30, 2001, an increase of \$15.8 million or 25.6%. This increase was primarily due to the introduction in January 2002 of a revised fee structure for annual renewal fees.

LAS revenue totaled \$28.2 million for the nine months ended September 30, 2002 compared with \$26.8 million for the nine months ended September 30, 2001, an increase of \$1.4 million or 5.2%. On a billed basis, LAS fees totaled \$25.0 million for the nine months ended September 30, 2002 compared with \$24.7 million for the nine months ended September 30, 2001, an increase of \$0.3 million or 1.2% primarily due to the number of secondary offerings, increasing from 112 in the nine months ended September 30, 2001 to 116 in the nine months ended September 30, 2002.

Initial listing revenues totaled \$25.2 million for the nine months ended September 30, 2002 compared with \$27.0 million for the nine months ended September 30, 2001, a decrease of \$1.8 million or 6.7%. On a billed basis, initial listing fees totaled \$16.0 million for the nine months ended September 30, 2002 compared with \$9.7 million for the nine months ended September 30, 2001, an increase of \$6.3 million or 64.9%, primarily due to an increase in initial listing fees implemented in January 2002. The number of IPOs listing on The Nasdaq Stock Market decreased from 39 companies in the first nine months of 2001 to 35 companies in the nine months of 2002.

#### Other Revenues

For the nine months ended September 30, 2002, other revenues was \$28.7 million compared with \$37.3 million for the nine months ended September 30, 2001, a decrease of \$8.6 million or 23.1%. Other revenues primarily include trademark and licensing revenues related to the QQQ and related products. Nasdaq earns revenues based on the licensing of the Nasdaq brand name for a variety of financial products here and abroad. Among these products are the QQQ, options, futures, mutual funds and a variety of other products. The QQQ is a unit investment trust that holds shares of the top 100 U.S. and international non-financial stocks listed on The Nasdaq Stock Market that comprise the Nasdaq-100 Index. The decrease in other revenue is attributable to a decrease in trademark license revenue related to the QQQ occurring outside the Nasdaq InterMarket. The decline in trademark revenue is effectively offset by the higher tape revenue received by Nasdaq InterMarket, which is reflected in Market Information Services, as a result of its increased market share. Other revenue was also impacted in June 2001 by a gain on the settlement of certain variable Nasdaq Japan stock based awards.

#### Direct Expenses

|   | Nine months ended<br>September 30, |                 |
|---|------------------------------------|-----------------|
|   | 2002                               | 2001            |
|   | (\$ in millions)                   |                 |
| Compensation and benefits                   | \$ 142.4                           | \$ 131.1        |
| Marketing and advertising                   | 14.2                               | 17.6            |
| Depreciation and amortization               | 75.2                               | 65.6            |
| Professional and contract services          | 49.3                               | 54.4            |
| Computer operations and data communications | 113.2                              | 131.9           |
| Provision for bad debts                     | 9.0                                | 14.5            |
| Travel, meetings, and training              | 9.4                                | 11.2            |
| Occupancy                                   | 24.4                               | 19.9            |
| Publications, supplies, and postage         | 7.8                                | 8.5             |
| Nasdaq Japan impairment loss                | 15.2                               | —               |
| Disaster related                            | —                                  | 0.8             |
| Other                                       | 19.9                               | 28.6            |
| <b>Total direct expenses</b>                | <b>\$ 480.0</b>                    | <b>\$ 484.1</b> |

For the nine months ended September 30, 2002, direct expenses were \$480.0 million compared with \$484.1 million for the nine months ended September 30, 2001, a decrease of \$4.1 million or 0.8%.

Compensation and benefits expense was \$142.4 million for the nine months ended September 30, 2002 compared with \$131.1 million for the nine months ended September 30, 2001, an increase of \$11.3 million or 8.6% primarily due to a number of factors, including increased headcount related to internal functions being handled by Nasdaq as a result of the separation from the NASD. Direct expenses for the nine months ended September 30, 2002 also includes \$2.7 million of compensation and benefits incurred during the first quarter related to employees of Nasdaq Europe, which was not purchased until March 27, 2001. These increases were offset by a reduction in headcount at Nasdaq that occurred during the first quarter of 2002 as a result of the economic conditions.

Marketing and advertising expense was \$14.2 million for the nine months ended September 30, 2002 compared with \$17.6 million for the nine months ended September 30, 2001, a decrease of \$3.4 million or 19.3%. The decrease reflects the carryover into the first quarter of 2001 of Nasdaq's fourth quarter 2000 advertising campaign, which included sponsorship of NFL shows on CBS.

Depreciation and amortization expense was \$75.2 million for the nine months ended September 30, 2002 compared with \$65.6 million for the nine months ended September 30, 2001, an increase of \$9.6 million or 14.6% primarily due to capacity and technology infrastructure improvements required to support market activity and new initiatives. In addition, \$2.8 million of additional depreciation and amortization expense was recognized during the nine months ended September 30, 2002 related to Nasdaq Europe, which was not consolidated until March 27, 2001.

Professional and contract services expense was \$49.3 million for the nine months ended September 30, 2002 compared with \$54.4 million for the nine months ended September 30, 2001, a decrease of \$5.1 million or 9.4% primarily due to less reliance on outside contractors, a decrease in development costs associated with SuperMontage partially offset by increase in costs associated with Nasdaq's global expansion strategy.

Computer operations and data communications expense was \$113.2 million for the nine months ended September 30, 2002 compared with \$131.9 million for the nine months ended September 30, 2001, a decrease of \$18.7 million or 14.2%. This decrease was primarily due to a renegotiation of Nasdaq's contract with WorldCom that occurred during 2002. The decrease was also the result of fewer computer devices being used as a result of the reduction in force that had occurred at various trading firms as noted in the discussion of "Transaction Services - Access Service Revenue".

The provision for bad debts was \$9.0 million for the nine months ended September 30, 2002 compared with \$14.5 million for the nine months ended September 30, 2001, a decrease of \$5.5 million or 37.9% primarily due to the provision for the bankruptcy filing by Bridge Information Systems, Inc. reflected in the first quarter results of 2001. This is partially offset by an increase in inactive issuers with outstanding account balances resulting from the temporary suspension of listing requirements due to the events of September 11, and the continuing erosion of market conditions and increased payment defaults.

Occupancy expense was \$24.4 million for the nine months ended September 30, 2002 compared with \$19.9 million for the nine months ended September 30, 2001, an increase of \$4.5 million or 22.6% primarily due to a re-classification of real estate costs previously recorded in support costs for the nine months ended September 30, 2001 as a result of the separation from NASD.

During the second quarter of 2002, Nasdaq has recognized an other than temporary impairment on its equity investment in Nasdaq Japan of \$15.2 million. (See Note 2, Significant Transactions, for further discussion).

Disaster related expenses were \$0.8 million for the nine months ended September 30, 2001. As a result of the terrorist attacks on September 11, 2001, Nasdaq incurred costs of \$0.8 million (\$0.5 million after taxes) in the third quarter of 2001. These expenses primarily consist of costs related to the efforts to restore services to market participants; the testing of the trading system; and the required reconfiguring of technology, telecommunications and alternative office facilities due to the temporary relocation of employees.

The remaining direct expenses were \$37.1 million for the nine months ended September 30, 2002 compared with \$48.3 million for the nine months ended September 30, 2001, a decrease of \$11.2 million or 23.2%. The decrease was primarily due to reduced losses from international operations.

## Support Costs

Support costs from related parties were \$56.5 million for the nine months ended September 30, 2002 compared with \$76.1 million for the nine months ended September 30, 2001, a decrease of \$19.6 million or 25.8%. The decrease reflects Nasdaq's continued move towards less reliance upon support from the NASD and its affiliates. Surveillance and other regulatory charges from NASDR were \$58.1 million for the nine months ended September 30, 2002 compared with \$61.7 million for the nine months ended September 30, 2001, a decrease of \$3.6 million or 5.8%. Support costs from the NASD were \$4.8 million for the nine months ended September 30, 2002 compared with \$25.3 million for the nine months ended September 30, 2001, a decrease of \$20.5 million or 81.0%. In addition, the amount of Nasdaq costs charged to the Amex were \$6.4 million for the nine months ended September 30, 2002 compared with \$10.9 million for the nine months ended September 30, 2001, a decrease of \$4.5 million or 41.3%. Amounts charged to related parties are netted against charges from related parties in the "Support costs from related parties, net" line item on the Condensed Consolidated Statements of Income.

## Income Taxes

Nasdaq's income tax provision was \$40.7 million for the nine months ended September 30, 2002 compared to \$44.3 million for the nine months ended September 30, 2001. The effective tax rate was 48.8% for the nine months ended September 30, 2002 compared to 45.2% for the nine months ended September 30, 2001. The increase in Nasdaq's effective tax rate was primarily due to a reduction in tax benefits related to tax preferred investments such as tax exempt interest and dividend received deductions and foreign losses for which no tax benefit is taken.

## Liquidity and Capital Resources

### September 30, 2002 compared to December 31, 2001

Cash and cash equivalents and available-for-sale securities totaled \$458.7 million at September 30, 2002 compared with \$521.8 million at December 31, 2001, a decrease of \$63.1 million or 12.1%. Working capital (current assets less current liabilities and current investments held-to-maturity at amortized cost) totaled \$424.1 million at September 30, 2002 compared with \$521.6 million at December 31, 2001, a decrease of \$97.5 million or 18.7%.

Cash and cash equivalents totaled \$274.2 million at September 30, 2002 compared with \$293.7 million at December 31, 2001, a decrease of \$19.5 million or 6.6% primarily due to cash used in investing activities of \$26.2 million and cash used in financing activities of \$145.2 million offset by cash provided by operating activities of \$151.9 million.

Operating activities provided net cash inflows of \$151.9 million for the nine months ended September 30, 2002, primarily due to cash received from customers less cash paid to suppliers, employees and related parties and income taxes paid.

Net cash used in investing activities was \$26.2 million for the nine months ended September 30, 2002, primarily due to purchases of \$152.6 million of available-for-sale investments and capital expenditures of \$78.8 million related to SuperMontage, global initiatives, and general capacity increases offset by proceeds of \$183.9 million from the redemption of available-for-sale investments,

Cash used in financing activities was approximately \$145.2 million for the nine months ended September 30, 2002, primarily due to the payment of approximately \$305.2 million to fund the repurchase of all remaining shares of common stock owned by the NASD, except for shares underlying warrants to purchase outstanding Common Stock previously sold by the NASD, as discussed in Note 2 to the Condensed Consolidated Financial Statements, offset by an increase in long term debt of \$151.6 million primarily attributed to a \$150.0 million private debt offering of Nasdaq's senior notes due 2007.

Nasdaq believes that the liquidity provided by existing cash and cash equivalents, investments, and cash generated from operations will provide sufficient capital to meet current and future operating requirements. On August 29, 2002, Nasdaq entered into a \$150 million unsecured revolving-credit facility. Nasdaq plans to use the Facility for general corporate purposes. (See Note 2, Significant Transactions, for further discussion). Nasdaq has generated positive cash flows annually in each of the five years since 1996 and believes that it will continue to do so in the future to meet both short and long term operating requirements.

**Item 3. Quantitative and Qualitative Disclosure of Market Risk**

Market risk represents the risks of changes in the value of a financial instrument, derivative or non-derivative, caused by fluctuations in interest rates, foreign exchange rates, and equity prices. As of September 30, 2002, Nasdaq's investment portfolio consisted primarily of floating rate securities, obligations of U.S. Government sponsored enterprises, municipal bonds, and commercial paper. Nasdaq's primary market risk is associated with fluctuations in interest rates and the effects that such fluctuations may have on its investment portfolio and outstanding debt. The investment portfolio is held primarily in short-term investments. Therefore, management does not believe that a 100 basis point fluctuation in market interest rates will have a material effect on the carrying value of Nasdaq's investment portfolio or on Nasdaq earnings or cash flows. Nasdaq's exposure to these risks has not materially changed since December 31, 2001.

Nasdaq also has exposure to foreign currency translation gains and losses due to its subsidiaries and equity method investments. As of September 30, 2002, Nasdaq has hedged certain foreign currency exposures. Nasdaq expects to periodically re-evaluate its foreign currency hedging policies and may choose in the future to enter into additional transactions.

**Item 4. Controls and Procedures**

(a). Evaluation of disclosure controls and procedures. Nasdaq's Chairman and Chief Executive Officer and Executive Vice President and Chief Financial Officer have evaluated the effectiveness of the design and operations of Nasdaq's disclosure controls and procedures (as defined in Exchange Act Rule 13a-14 (c) and Rule 15d-14 (c) within 90 days prior to the date of this report (the "Evaluation Date"). Based upon that evaluation, Nasdaq's Chairman and Chief Executive Officer and Executive Vice President and Chief Financial Officer concluded that, as of the Evaluation Date, Nasdaq's disclosure controls and procedures are effective in alerting them on a timely basis to material information relating to Nasdaq (including its consolidated subsidiaries) required to be included in its reports filed or submitted under the Exchange Act.

(b). Changes in internal controls. Since the Evaluation Date, there have been no significant changes in Nasdaq's internal controls or in other factors that could significantly affect these controls.

**The Nasdaq Stock Market, Inc.****PART II—OTHER INFORMATION****Item 6. Exhibits and Reports on Form 8-K**

- (a) Exhibits:  
The exhibits required by this item are set forth on the Exhibit Index attached hereto.
- (b) Reports on Form 8-K:  
No reports on Form 8-K were filed during the three months ended September 30, 2002.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

THE NASDAQ STOCK MARKET, INC. (Registrant)

Date: November 14, 2002

By: /s/ Hardwick Simmons  
Name: Hardwick Simmons  
Title: Chairman and Chief Executive Officer

Date: November 14, 2002

By: /s/ David P. Warren  
Name: David P. Warren  
Title: Executive Vice President and Chief Financial Officer

**CERTIFICATIONS**

I, Hardwick Simmons, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Nasdaq Stock Market, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ Hardwick Simmons

Hardwick Simmons  
Chairman and Chief Executive Officer

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I, David P. Warren, certify that:

1. I have reviewed this quarterly report on Form 10-Q of The Nasdaq Stock Market, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ David P. Warren

Name: David P. Warren  
Title: Executive Vice President and Chief Financial Officer

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### EXHIBIT INDEX

| <b>Exhibit No.</b> | <b>Exhibit Name</b>  |
|--------------------|--|
| 9.1                | Second Amendment to the Voting Trust Agreement, dated as of July 18, 2002, among The Nasdaq Stock Market, Inc., the National Association of Securities Dealers, Inc., The Bank of New York and Mellon Investor Services LLC.   |
| 10.1               | U.S. \$150,000,000 364-Day Credit Agreement, dated as of August 29, 2002, among The Nasdaq Stock Market, Inc., Citibank, N.A., Credit Lyonnais New York Branch and certain banks named therein.  |
| 10.2               | Master Agreement, dated as of February 6, 2002, among The Nasdaq Stock Market, Inc., and The American Stock Exchange, LLC and The American Stock Exchange Corporation. *   |
| 10.3               | Technology Transition Agreement, dated as of February 6, 2002, among The Nasdaq stock Market, Inc., The National Association of Securities Dealers, Inc., and The American Stock Exchange LLC. *   |
| 10.4               | Second Amendment to EWN II Agreement, dated as of June 17, 2002, between WorldCom Communications, Inc. and The Nasdaq Stock Market, Inc. *   |
| 11.1               | Computation of Per Share Earnings (omitted in accordance with section (b)(11) of Item 601 of Regulation S-K. The calculation of per share earnings is set forth in Part I, Item 1, in Note 9 to the Condensed Consolidated Financial Statements (Capital Stock and Earnings Per Share)). |
| 99.1               | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |

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\* Confidential treatment has been requested from the U.S. Securities and Exchange Commission for certain portions of this exhibit.

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**SECOND AMENDMENT TO VOTING TRUST AGREEMENT**

**THIS SECOND AMENDMENT** (*Second Amendment*) made as of July 18, 2002 amends and supplements the Voting Trust Agreement, dated June 28, 2000 (*Agreement*), as amended by the First Amendment to such Agreement, made as of January 18, 2001 (*First Amendment*) by and among the National Association of Securities Dealers, Inc., a Delaware non-stock corporation (*NASD*), The Nasdaq Stock Market, Inc., a Delaware corporation (*Company*), and The Bank of New York, a New York banking corporation (*BONY*). Unless otherwise provided in this Second Amendment, defined terms shall have the same meanings set forth in the Agreement.

**WHEREAS** BONY has acted as the Warrant Agent pursuant to the Amended and Restated Warrant Agreement between the NASD and BONY dated as of June 28, 2000 (*Warrant Agreement*) and as the Voting Trustee pursuant to the Agreement as amended by the First Amendment;

**AND WHEREAS** BONY has notified the NASD that it intends to resign as Warrant Agent effective 11:59 pm New York time on June 21, 2002 and the Warrant Agreement, the Agreement and the First Amendment concern warrants (*Warrants*) to purchase 43,225,976 shares of the Company's common stock, par value \$.01 per share (*Shares*);

**AND WHEREAS** Mellon Investor Services LLC, a Delaware Limited Liability Company (*Mellon*) will be appointed by the NASD as the successor Warrant Agent pursuant to the terms of the Warrant Agreement; and

**AND WHEREAS** NASD, the Company, BONY and Mellon now desire to amend the Agreement, as amended by the First Amendment, to reflect Mellon's appointment as successor Warrant Agent and to further set forth the duties and responsibilities of Mellon and BONY in order to facilitate the efficient exercise of the Warrants;

**NOW, THEREFORE**, in consideration of the promises, covenants and the mutual obligations hereinafter set forth, the parties hereby agree as follows:

1. **Definition.** All references to Warrant Agent in the Voting Trust Agreement shall mean Mellon Investor Services LLC, a Delaware Limited Liability Company ("Mellon").
2. **Successor Warrant Agent.** Section 9 of the Agreement is hereby amended and supplemented by adding the following as the new Section 9(k) of the Agreement:

"BONY hereby acknowledges that Mellon has been appointed the successor Warrant Agent by the NASD and agrees that it will work with Mellon in good faith and will give Mellon and any persons designated by Mellon any assistance reasonably required in order to facilitate the exercise of the Warrants. BONY hereby agrees that it will deposit the certificates for the Shares held in its nominee's name Hane & Co. into a book entry account held at Mellon, as the Warrant Agent. Mellon agrees that it will issue temporary Voting Trust Certificates on behalf of the Voting Trustee as directed by BONY. Mellon further agrees that it will promptly, but in any event within two (2) business days following any exercise and exchange of a Warrant, provide BONY and NASD with a

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report that sets forth the number of Shares underlying the Warrants that have been exercised and exchanged. The format of this report will be mutually agreed upon by the parties to this Second Amendment. Mellon, in its role as the successor Warrant Agent, will notify BONY and NASD of the names of the holders of Warrants that have been exercised and exchanged and the number of Shares acquired by each such holder pursuant to the exercise and exchange of Warrants. Mellon will provide this information to BONY and NASD in a report, the frequency and content of which will be mutually agreed upon by the parties to this Second Amendment. BONY will then calculate the number of Shares underlying the unexercised and unexchanged Warrants and will certify such number to Mellon and NASD in the form of a report, the frequency and content of which will be mutually agreed upon by the parties to this Second Amendment. The Company and NASD hereby authorize and instruct Mellon, as the transfer services provider for the Shares, to issue the Voting Trust Certificates, representing the Purchased Shares, and to accept instructions with respect to the Shares and the Voting Trust Certificates furnished by BONY in its capacity as Voting Trustee. NASD and the Company will indemnify and hold harmless Mellon from any loss or expense incurred by Mellon in relying upon any such instruction unless such instruction is obviously erroneous. The holders of the unexercised and unexchanged Warrants do not have the right to direct BONY as to the voting of the Shares underlying the unexercised and unexchanged Warrants held by such holder until after Nasdaq is granted exchange registration."

3. **Remaining Terms.** Except as set forth in this Second Amendment and the First Amendment, all of the remaining terms and conditions of the Agreement remain in full force and effect.
4. **Interpretation.** In the event of any conflict between the provisions of this Second Amendment and the provisions of the Agreement or the First Amendment, the provisions of this Second Amendment will prevail. Section headings are included for convenience only and are not to be used to construe or interpret the Agreement, the First Amendment or this Second Amendment.
5. **Counterparts.** The Agreement, the First Amendment and this Second Amendment may be executed in one or more counterparts, each of which will be deemed an original, and such counterparts together shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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**IN WITNESS WHEREOF**, the parties hereto have caused this Second Amendment to be executed by their duly authorized officers.

Signature:     /s/ Todd Diganci    

Name:     Todd Diganci    

Title:     EVP & CFO    

The Bank of New York  
(BONY)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Mellon Investor Services LLC  
(Mellon)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

[SEAL]

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Amendment to be executed by their duly authorized officers.

National Association of  
Securities Dealers, Inc. (NASD)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

The Nasdaq Stock Market, Inc.  
(Nasdaq)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

The Bank of New York  
(BONY)

Signature:     /s/ Harley Jeanty    

Name:     HARLEY JEANTY    

Title:     Vice President    

Mellon Investor Services LLC  
(Mellon)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Amendment to be executed by their duly authorized officers.

National Association of  
Securities Dealers, Inc. (NASD)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

The Nasdaq Stock Market, Inc.  
(Nasdaq)

Signature:     /s/ David P. Warren    

Name:     David P. Warren    

Title:     EVP, Chief Financial Officer    

The Bank of New York  
(BONY)

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Mellon Investor Services LLC  
(Mellon)

Signature:     /s/ [ILLEGIBLE]    

Name:     [ILLEGIBLE]    

Title:     Vice President

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U.S. \$150,000,000

364-DAY CREDIT AGREEMENT

Dated as of August 29, 2002

Among

THE NASDAQ STOCK MARKET, INC.  
as Borrower

THE BANKS NAMED HEREIN  
as Banks

SALOMON SMITH BARNEY INC.  
as Sole Lead Arranger and Sole Book Manager

CREDIT LYONNAIS NEW YORK BRANCH  
as Documentation Agent

and

CITIBANK, N.A.  
as Administrative Agent

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T A B L E O F C O N T E N T S

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- SECTION 1.03. Accounting Terms

ARTICLE 2 AMOUNTS AND TERMS OF THE ADVANCES

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- SECTION 2.02. Making the Advances
- SECTION 2.03. Certain Fees
- SECTION 2.04. Reduction, Extensions and Increases of the Commitments
- SECTION 2.05. Repayment
- SECTION 2.06. Interest
- SECTION 2.07. Additional Interest on Eurodollar Rate Advances
- SECTION 2.08. Interest Rate Determinations
- SECTION 2.09. Voluntary Conversion and Continuation of Advances
- SECTION 2.10. Prepayments of Advances
- SECTION 2.11. Increased Costs
- SECTION 2.12. Illegality
- SECTION 2.13. Payments and Computations
- SECTION 2.14. Taxes
- SECTION 2.15. Set-Off; Sharing of Payments, Etc.
- SECTION 2.16. Right to Replace a Lender
- SECTION 2.17. Evidence of Indebtedness

ARTICLE 3 CONDITIONS OF LENDING

- SECTION 3.01. Conditions Precedent to Initial Borrowing
- SECTION 3.02. Conditions Precedent to Each Borrowing

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

- SECTION 4.01. Representations and Warranties of the Borrower

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CREDIT AGREEMENT dated as of August 29, 2002 among THE NASDAQ STOCK MARKET, INC., a corporation organized under the laws of Delaware (the "Borrower"), the banks (each a "Bank" and, collectively, the "Banks") listed on the signature pages hereof, and CITIBANK, N.A., a national banking association, as administrative agent (in such capacity, the "Administrative Agent").

The Borrower has requested that the Lenders (as hereinafter defined) make loans to it in an aggregate principal amount not exceeding \$150,000,000 at any one time outstanding for the general corporate purposes of the Borrower, and the Lenders are prepared to make such loans upon the terms and conditions hereof. Accordingly, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS AND ACCOUNTING TERMS**

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Additional Commitment Lender" has the meaning specified in Section 2.04(b)(iv).

"Administrative Agent" has the meaning specified in the introduction hereto.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Administrative Agent.

"Advance" means an advance by a Lender to the Borrower as part of a Borrowing and refers to a Base Rate Advance or a Eurodollar Rate Advance.

"Affected Person" has the meaning specified in Section 2.16.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person.

“Applicable Lending Office” means, with respect to any Lender, such Lender’s Domestic Lending Office in the case of a Base Rate Advance and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Rate Advance.

“Applicable Facility Fee Rate” means 0.09% per annum.

“Applicable Margin” means:

- (a) for any Advance that is a Base Rate Advance, 0.000% per annum; and
- (b) for any Advance that is a Eurodollar Rate Advance, 0.36% per annum.

#### 364-Day Credit Agreement

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“Applicable Utilization Fee Rate” means 0.10% per annum.

“Arranger” means Salomon Smith Barney Inc., in its capacity as sole lead arranger and sole book manager.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of Exhibit B hereto.

“Bank” has the meaning specified in the introduction hereto.

“Base Rate” means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the higher of: (a) the rate of interest announced publicly by Citibank in New York, New York from time to time as Citibank’s base rate; and (b) ½ of one percent per annum above the Federal Funds Rate.

“Base Rate Advance” means an Advance which bears interest at rates based upon the Base Rate.

“Borrower” has the meaning specified in the introduction hereto.

“Borrowing” means a borrowing consisting of simultaneous Advances of the same Type made by each of the Lenders pursuant to Section 2.01.

“Business Day” means a day of the year on which banks are not required or authorized to close in New York City and, if the applicable Business Day relates to any Eurodollar Rate Advance, on which dealings are carried on in the London interbank market.

“Capitalized Lease” of a Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“Capitalized Lease Obligations” of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

“Change in Control” means any of the following events:

(a) the Borrower is merged, consolidated or reorganized into or with another corporation or other Person, and as a result of such merger, consolidation or reorganization less than a majority of the combined voting power of the then outstanding Voting Shares of the corporation or other Person that is the survivor or parent of the survivor of such merger, consolidation or reorganization immediately after such transaction is held in the aggregate by the holders of Voting Shares of the Borrower immediately prior to such transaction; or

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(b) the Borrower sells all or substantially all of its assets to any other corporation or other Person, and less than a majority of the combined voting power of the then outstanding Voting Shares of such corporation or other Person immediately after such transaction is held in the aggregate by the holders of Voting Shares of the Borrower immediately prior to such sale; or

(c) any “person” or “group”, as such terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act (other than (i) the NASD or (ii) the Borrower), is or becomes the “beneficial owner” (as such term is used in Rule 13d-3 promulgated pursuant to the Exchange Act), directly or indirectly, of more than 50% of the aggregate voting power of all Voting Shares of the Borrower; or

(d) during any period of 13 consecutive calendar months, a majority of the Board of Directors of the Borrower shall no longer be composed of individuals (i) who were members of said Board on the first day of such period, (ii) whose election or nomination to said Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of said Board or (iii) whose election or nomination to said Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of said Board;

provided, that the occurrence of the Restructuring shall not be deemed to be a Change in Control.

“Citibank” means Citibank, N.A., a national banking association.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Commitment” has the meaning specified in Section 2.01(a).

“Commitment Increase Offer” has the meaning specified in Section 2.04(c)(i).

“Commitment Increase Supplement” has the meaning specified in Section 2.04(c)(iii).

“Commitment Percentage” means, as to any Lender at any time, the percentage which such Lender’s Commitment then constitutes of the aggregate Commitments (or, at any time after the Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Advances then outstanding constitutes of the aggregate principal amount of the Advances then outstanding).

“Commitment Termination Date” means August 28, 2003 or, in the case of any Lender whose Commitment is extended pursuant to Section 2.04(b), the date to which such Commitment is extended; provided in each case that if any such date is not a Business Day, the relevant Commitment Termination Date of such Lender shall be the immediately preceding Business Day. When the term “Commitment Termination Date” is used herein without reference to any particular Lender, such term shall, in such

instance, be deemed to be a reference to the latest Commitment Termination Date of any of the Lenders then in effect hereunder.

“Consolidated” refers to the consolidation of accounts of the Borrower and its Subsidiaries in accordance with GAAP.

“Consolidated Capitalization” means, as of the date of determination thereof, the total stockholder’s equity for the Borrower and its Consolidated Subsidiaries (on a consolidated basis) as the same would appear on a consolidated balance sheet of the Borrower and its Consolidated Subsidiaries prepared as of such date in accordance with GAAP, including Consolidated Total Long-Term Indebtedness and preferred stock of the Borrower and its Consolidated Subsidiaries, but excluding any stock, common or preferred, not both issued and outstanding.

“Consolidated EBIT” means, for any period, the sum (without duplication in accordance with GAAP), for the Borrower and its Consolidated Subsidiaries (on a consolidated basis), of (a) net income for such period plus (b) to the extent deducted in determining net income for such period, the sum of (i) Consolidated Interest Expense for such period and (ii) Taxes for such period.

“Consolidated Interest Expense” means, with respect to any Person for any period, the aggregate amount of interest accruing during such period on Indebtedness of such Person and its Consolidated Subsidiaries on a consolidated basis, determined in accordance with GAAP, including the interest portion of payments under Capitalized Lease Obligations and any capitalized interest and amortization of debt discount and expense.

“Consolidated Net Income” means, at any time, for the Borrower and its Consolidated Subsidiaries on a consolidated basis, the aggregate of the net income (or loss) for such period determined without duplication in accordance with GAAP.

“Consolidated Tangible Net Worth” means, at any time, for the Borrower and its Consolidated Subsidiaries on a consolidated basis, consolidated stockholders’ equity less the book value of goodwill, patents, trademarks, service marks, trade names, copyrights, charters, franchises, certificates, permits and licenses and any other intangible assets, all determined in accordance with GAAP.

“Consolidated Total Long-Term Indebtedness” means, at any time, for the Borrower and its Consolidated Subsidiaries on a consolidated basis, the aggregate outstanding principal amount of Indebtedness maturing one year or more after the date incurred or incurred under a revolving credit or similar facility having a duration of more than one year or renewable or extendible at the option of the Borrower for more than one year.

“Continuation”, “Continue” and “Continued” each refers to a continuation of Eurodollar Rate Advances from one Interest Period to the next Interest Period pursuant to Section 2.09(b).

“Controlled Group” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

“Convert”, “Conversion” and “Converted” each refers to a conversion of Advances of one Type into Advances of the other Type pursuant to Section 2.08 or Section 2.09(a).

“Declined Amount” has the meaning specified in Section 2.04(c)(i).

“Declining Lender” has the meaning specified in Section 2.04(c)(i).

“Default” means an event that, with notice or lapse of time or both, would become an Event of Default.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Domestic Lending Office” in the Administrative Questionnaire of such Bank or in the Assignment and Acceptance pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Effective Date” means the earliest date as of which the conditions precedent to effectiveness set forth in Section 3.01 shall have been satisfied or waived.

“Eligible Assignee” means:

- (a) a Lender and any Affiliate of such Lender;
- (b) a commercial bank organized under the laws of the United States, or any State thereof, and having total assets in excess of \$1,000,000,000;
- (c) a savings bank organized under the laws of the United States, or any State thereof, and having total assets in excess of \$500,000,000;
- (d) a commercial bank organized under the laws of any other country which is a member of the OECD or a political subdivision of any such country, and having total assets in excess of \$1,000,000,000; and
- (e) a finance company or other financial institution or fund which is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business, and having total assets in excess of \$500,000,000.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

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“Eurocurrency Liabilities” has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurodollar Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Eurodollar Lending Office” in the Administrative Questionnaire of such Lender or in the Assignment and Acceptance pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

“Eurodollar Rate” means, with respect to any Eurodollar Rate Advance for any Interest Period:

- (a) the offered rate for deposits in U.S. dollars with a maturity comparable to such Interest Period appearing on Telerate Page 3750 as of approximately 11:00 a.m. (London time), on the date two Business Days prior to the commencement of such Interest Period;
- (b) if such rate does not appear on Telerate Page 3750, the offered rate for deposits in U.S. dollars with a maturity comparable to such Interest Period appearing on the display designated on Reuter Page LIBO as of approximately 11:00 a.m. (London time) on the date two Business Days prior to the commencement of such Interest Period; and
- (c) in the event that neither rate referred to in clauses (a) or (b) is available at such time for any reason, then the “Eurodollar Rate” with respect to such Interest Period for such Eurodollar Rate Advance shall be the rate per annum equal to the average of the rate per annum at which deposits in U.S. dollars are offered by the principal office of each of the Reference Banks in London, England to leading banks in the London interbank market at 11:00 a.m. (London time) on the Determination Date in an amount substantially equal to such Reference Bank’s Eurodollar Rate Advance comprising part of the related Borrowing and for a period equal to such Interest Period.

“Eurodollar Rate Advance” means an Advance which bears interest at rates based upon the Eurodollar Rate.

“Eurodollar Rate Reserve Percentage” of any Lender for any Interest Period for any Eurodollar Rate Advance means the reserve percentage applicable during such Interest Period (or if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such Interest Period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any emergency, supplemental or other marginal reserve requirement) for such Lender with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term equal to such Interest Period.

“Events of Default” has the meaning specified in Section 6.01.

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“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

“Excluded Representations” means the representations and warranties set forth in clause (iii) of Section 4.01(e) and in Section 4.01(f).

“Existing Commitment Termination Date” has the meaning specified in Section 2.04(b)(i).

“Facility Fee” has the meaning specified in Section 2.03(a).

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time.

“Governmental Authority” means the federal government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government including, without limitation, the SEC.

“Guarantee” by any Person means, without duplication, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Indebtedness of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness (whether arising by virtue of partnership arrangements, by agreement to keep–well, to purchase assets, goods, securities or services, to take–or–pay, or to maintain financial statement conditions or otherwise, other than agreements to purchase goods at an arm’s length price in the ordinary course of business) or (ii) entered into for the purpose of assuring in any other manner the holder of such Indebtedness of the payment thereof or to protect such holder against loss in respect thereof (in whole or in part); provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Hedging Agreement” means any rate, basis, commodity, currency, debt or equity swap, any cap, collar or floor agreement, or any similar agreement entered into for the purpose of hedging risk.

“Indebtedness” of any Person means, without duplication, (a) indebtedness of such Person for borrowed money, (b) obligations of such Person evidenced by bonds,

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debentures, notes or other similar instruments, (c) obligations of such Person to pay the deferred purchase price of Property or services (excluding, however, trade accounts payable arising in the ordinary course of business and not overdue), (d) Capitalized Lease Obligations of such Person, (e) Indebtedness of others Guaranteed by such Person, (f) Indebtedness of others secured by a Lien on the Property of such Person, (g) all obligations of such Person to redeem, retire, defease or otherwise make any payment in respect of shares of capital stock of such Person, (h) all obligations, contingent or otherwise, of such Person in respect of letters of credit or acceptances (other than commercial letters of credit in respect of trade accounts payable and not overdue) and (i) the net liability of such Person under Hedging Agreements.

“Initial Threshold” means, at any time, the sum of (i) \$175,000,000 plus (ii) an amount equal to 50% of Consolidated Net Income (if positive) for each fiscal quarter of the Borrower commencing with the fiscal quarter ending September 30, 2002 plus (iii) an amount equal to 75% of net proceeds of any public equity offering by the Borrower or any Subsidiary after the date hereof.

“Interest Period” means, with respect to any Eurodollar Rate Advance, the period beginning on the date such Eurodollar Rate Advance is made or Continued, or Converted from a Base Rate Advance, and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each Interest Period shall be one, two, three or six months, as the Borrower may, upon notice received by the Administrative Agent not later than 12:00 p.m. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided that:

- (i) the Borrower may not select any Interest Period that ends after the Commitment Termination Date;
- (ii) each Interest Period that begins on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; and
- (iii) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day.

“Lenders” means the Banks listed on the signature pages hereof and each Person that shall become a party hereto pursuant to Sections 2.04(c) and 8.06(a), (b) and (c).

“Lien” means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement having substantially the same effect as a lien, including, without limitation, the lien or retained security title of a conditional vendor.

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“Majority Lenders” means, at any time, Lenders whose Commitment Percentages in the aggregate exceed 50% or, if the Commitments have terminated, Lenders having, in the aggregate, Advances in an aggregate principal amount exceeding 50% of the aggregate outstanding principal amount of all Advances.

“Margin Stock” means margin stock within the meaning of Regulation U.

“Material Adverse Effect” means a material adverse effect on (i) the business, condition (financial or otherwise), results of operations or prospects of the Borrower and its Subsidiaries, taken as a whole, (ii) the legality, validity or enforceability of this Agreement or (iii) the ability of the Borrower to pay and perform its obligations hereunder.

“Material Indebtedness” has the meaning specified in Section 6.01(d).

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Moody’s Rating” means, at any time, the rating of the Borrower’s unsecured, unguaranteed senior long-term debt obligations then outstanding most recently announced by Moody’s.

“Multiemployer Plan” means as defined in Section 414(f) of the Code.

“Multiple Employer Plan” means a Plan subject to Title IV of ERISA maintained by one or more employers, other than a Multiemployer Plan.

“NASD” means the National Association of Securities Dealers, Inc.

“New Lender” has the meaning specified in Section 2.04(c)(ii).

“New Lender Supplement” has the meaning specified in Section 2.04(c)(ii).

“Non-Extending Lender” has the meaning specified in Section 2.04(b)(ii).

“Notice of Borrowing” has the meaning specified in Section 2.02(a)(ii).

“Notice Date” has the meaning specified in Section 2.04(b)(ii).

“OECD” means the Organization for Economic Cooperation and Development.

“Other Taxes” has the meaning specified in Section 2.14(b).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor.

“Permitted Liens” means any of the following:

(a) Liens securing the performance of, or payment in respect of, leases, contracts (other than for the repayment of borrowed money), surety and

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appeal bonds and other obligations of a similar nature incurred in the ordinary course of business;

(b) any interest or title of a lessor or sublessor and any restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject that is incurred in the ordinary course of business;

(c) customary rights of setoff upon deposits of cash in favor of banks or other depository institutions in which such cash is maintained in the ordinary course of business;

(d) Liens arising out of judgments or awards that do not constitute an Event of Default under Section 6.01(g) and in respect of which the Borrower or any of its Subsidiaries subject thereto shall be prosecuting an appeal or proceedings for review in good faith and shall be maintaining appropriate reserves with respect to any such judgment or award; and

(e) easements, operating agreements, covenants, conditions, rights of way, survey exceptions, sewers, electric lines, licenses, telegraph and telephone lines, zoning restrictions and other encumbrances on title to, or restrictions on the use of, real property that do not render title to the property encumbered thereby unmarketable or adversely affect the use of such property for its present purposes in any material manner.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or Governmental Authority thereof.

“Plan” means an employee pension benefit plan, as defined in Section 3(2) of ERISA, maintained, sponsored or contributed to by the Borrower or any of its Subsidiaries or, with respect to such a plan that is subject to Title IV of ERISA, by any member of the Controlled Group.

“Property” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

“Reference Banks” means the principal London offices of Citibank, Credit Lyonnais New York Branch and Fifth Third Bank.

“Register” has the meaning specified in Section 8.06(d).

“Regulations T, U and X” means Regulations T, U and X issued by the Board of Governors of the Federal Reserve System, as from time to time amended.

“Reportable Event” means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding,

however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; provided, however, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“Responsible Officer” of the Borrower means the Chief Executive Officer, the Chief Financial Officer, the Senior Vice President and Treasurer, the Senior Vice President and Secretary or any Executive Vice President of the Borrower.

“Restructuring” means the occurrence of the following: (i) the approval by the SEC of the Borrower’s application for registration as a national securities exchange and (ii) the NASD ceasing to hold a majority of the combined voting power of the outstanding Voting Shares of the Borrower.

“Reuter Page LIBO” means the page designated “LIBO” on the Reuter Monitor Money Rates Service (or on any successor or substitute page of such service, or any successor to such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time, for purposes of providing quotations of interest rates applicable to deposits in U.S. dollars in the London interbank market).

“SEC” means the U.S. Securities and Exchange Commission.

“Share Repurchase” means the purchase, redemption, retirement or other acquisition by the Borrower of shares of common and/or preferred stock of the Borrower.

“Significant Subsidiary” means any Subsidiary which is so defined pursuant to Rule 1-02 of Regulation S-X promulgated by the SEC.

“Single Employer Plan” means a Plan subject to Title IV of ERISA maintained by the Borrower or any member of the Controlled Group for employees of the Borrower or any member of the Controlled Group, other than a Multiemployer Plan or a Multiple Employer Plan.

“Solvent” means, with respect to any Person at any time, that (a) the fair value of the Property of such Person is greater than the total amount of liabilities (including without limitation contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (d) such Person is not engaged in a business and is not about to engage in a business for which such Person’s property would constitute an unreasonably small capital.

“Standard & Poor’s” means Standard & Poor’s Ratings Service, presently a division of The McGraw-Hill Companies, Inc., and its successors.

“Standard & Poor’s Rating” means, at any time, the rating of the Borrower unsecured, unguaranteed senior long-term debt obligations then outstanding most recently announced by Standard & Poor’s.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the Voting Shares are at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“surviving Person” has the meaning specified in Section 6.01(f).

“Telerate Page 3750” means page 3750 of the Telerate Service of Bridge Information Services (or on any successor or substitute page of such service, or any successor to such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time, for purposes of providing quotations of interest rates applicable to deposits in U.S. dollars in the London interbank market).

“Terminating Lender” has the meaning specified in Section 2.02(f).

“Termination Event” means, with respect to a Plan which is subject to Title IV of ERISA, (a) a Reportable Event, (b) the withdrawal of the Borrower or any other member of the Controlled Group from such Plan during a plan year in which the Borrower or any other member of the Controlled Group was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or was deemed such under Section 4068(f) of ERISA, (c) the termination of such Plan, the filing of a notice of intent to terminate such Plan or the treatment of an amendment of such Plan as a termination under Section 4041 of ERISA or (d) the institution by the PBGC of proceedings to terminate such Plan, in each case which could reasonably be expected to have a Material Adverse Effect.

“Type” refers to whether an Advance is a Base Rate Advance or a Eurodollar Rate Advance.

“Unfunded Liabilities” means the amount (if any) by which the present value of all accumulated benefit obligations of the Borrower or any member of the Controlled Group under a Single Employer Plan or Multiple Employer Plan exceeds the fair market value of assets allocable to such benefits, all determined as of the then most recent valuation date for such Plans using actuarial assumptions utilized for purposes of determining the current liability for purposes of such valuation.

“Utilization Fee” has the meaning specified in Section 2.03(b).

“Voting Shares” means, for any Person at any time, the outstanding securities of such Person entitled to vote generally in an election of directors (or other persons performing similar functions) of such Person.

“Wholly-Owned Subsidiary” of a Person means any Subsidiary all of the outstanding Voting Shares of which (other than directors’ qualifying shares) shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person. Unless otherwise expressly provided, all references herein to a “Wholly-Owned Subsidiary” shall mean a Wholly-Owned Subsidiary of the Borrower.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”.

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP or statutory accounting principals, as the case may be, consistent with those applied in the preparation of the financial statements referred to in Section 4.01(e).

## ARTICLE 2 AMOUNTS AND TERMS OF THE ADVANCES

SECTION 2.01. The Advances. (a) Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Advances to the Borrower from time to time on any Business Day during the period from the Effective Date until the Commitment Termination Date in an aggregate amount not to exceed at any time outstanding the amount set opposite such Lender’s name on Schedule I hereto or, if such Lender has entered into an Assignment and Acceptance, set forth for such Lender in the Register, as such amount may be reduced pursuant to Section 2.04(a) or increased pursuant to Section 2.04(c) (such Lender’s “Commitment”).

(b) Each Borrowing and each Conversion or Continuation thereof (i) shall (except as otherwise provided in Sections 2.08(f) and (g)) be in an aggregate amount not less than \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof and (ii) shall consist of Advances of the same Type (and, if such Advances are Eurodollar Rate Advances, having the same Interest Period) made, Continued or Converted on the same day by the Lenders ratably according to their respective Commitments. Within the limits of each Lender’s Commitment, the Borrower may from time to time borrow, prepay pursuant to Section 2.10(b) and reborrow under this Section 2.01.

SECTION 2.02. Making the Advances.

(a) (i) Each Borrowing shall be made on notice, given not later than 12:00 p.m. (New York City time) on the third Business Day prior to the date of such Borrowing (in the case of a Borrowing consisting of Eurodollar Rate Advances) or given not later than 12:00 p.m. (New York City time) on the Business Day of such Borrowing (in the case of a Borrowing consisting of Base Rate Advances), by the Borrower to the Administrative Agent, which shall give to each Lender prompt notice thereof.

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(ii) Each such notice of a Borrowing (a “Notice of Borrowing”) shall be in writing in substantially the form of Exhibit A hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Advances comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Eurodollar Rate Advances, initial Interest Period for each such Advance.

(iii) Each Lender shall, before 1:00 p.m. (New York City time) on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Administrative Agent at its address referred to in Section 8.02, in same day funds, such Lender’s ratable portion of such Borrowing; provided that, with respect to a Borrowing of a Eurodollar Rate Advance, no Lender having a Commitment Termination Date prior to the last day of the initial Interest Period for such Eurodollar Rate Advance shall participate in such Borrowing.

(iv) After the Administrative Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article 3, the Administrative Agent will make such funds available to the Borrower at the Administrative Agent’s aforesaid address.

(b) Anything in subsection (a) above to the contrary notwithstanding, the Borrower may select Eurodollar Rate Advances for any Borrowing only in an aggregate amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing which the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Lender against any loss, cost or expense (excluding loss of profit) reasonably incurred by such Lender as a result of any failure to make such Borrowing (including, without limitation, as a result of any failure to fulfill, on or before the date specified in such Notice of Borrowing, the applicable conditions set forth in Article 3) and the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Advance to be made by such Lender as part of such Borrowing. A certificate as to the amount of such losses, costs and expenses, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02 and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand (but without duplication) such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to Advances comprising

such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's Advance as part of such Borrowing for purposes of this Agreement (and such Advance shall be deemed to have been made by such Lender on the date on which such amount is so repaid to the Administrative Agent).

(e) The failure of any Lender to make the Advance to be made by it as part of any Borrowing shall not relieve the other Lenders of their obligations hereunder to make an Advance on the date of such Borrowing, and no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on the date of any Borrowing.

(f) Notwithstanding anything in this Agreement to the contrary, no Lender whose Commitment Termination Date falls prior to the last day of any Interest Period for any Eurodollar Rate Advance (a "Terminating Lender") shall participate in such Advance. Without limiting the generality of the foregoing, no Terminating Lender shall (i) participate in a Borrowing of any Eurodollar Rate Advance having an initial Interest Period ending after such Lender's Commitment Termination Date, (ii) have any outstanding Eurodollar Rate Advance Continued for a subsequent Interest Period if such subsequent Interest Period would end after such Lender's Commitment Termination Date or (iii) have any outstanding Base Rate Advance Converted into a Eurodollar Rate Advance if such Eurodollar Rate Advance would have an initial Interest Period ending after such Lender's Commitment Termination Date. If any Terminating Lender has outstanding a Eurodollar Rate Advance that cannot be Continued for a subsequent Interest Period pursuant to clause (ii) above or has outstanding a Base Rate Advance that cannot be Converted into a Eurodollar Rate Advance pursuant to clause (iii) above, such Lender's ratable share of such Eurodollar Rate Advance (in the case of said clause (ii)) shall be repaid by the Borrower on the last day of its then current Interest Period and such Lender's ratable share of such Base Rate Advance (in the case of said clause (iii)) shall be repaid by the Borrower on the day on which the Advances of Lenders unaffected by said clause (iii) are so Converted.

#### SECTION 2.03. Certain Fees.

(a) Facility Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee (the "Facility Fee") on the average daily amount (whether used or unused) of such Lender's Commitment from the date hereof (in the case of each Bank) and from the effective date specified in the Assignment and Acceptance pursuant to which it became a Lender (in the case of each such Lender) until the Commitment Termination Date of such Lender at a rate per annum equal to the Applicable Facility Fee Rate. The Facility Fee shall be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Commitment Termination Date of each Lender.

(b) Utilization Fee. For each day on which the aggregate principal amount of Advances outstanding exceeds an amount equal to 50% of the aggregate Commitments, the Borrower agrees to pay to the Administrative Agent for the account of each Lender a utilization fee (the "Utilization Fee") on the aggregate principal amount of the Advances of such Lender outstanding on such day at a rate per annum equal to the Applicable Utilization Fee Rate. The

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Utilization Fee will be payable in respect of each Advance on each date on which interest is payable on such Advance, as specified in Section 2.06(a) hereof.

(c) Administrative Agent's Fee. The Borrower agrees to pay to the Administrative Agent, for the Administrative Agent's own account, an administrative agency fee at the times and in the amounts heretofore agreed between the Borrower and the Administrative Agent.

#### SECTION 2.04. Reduction, Extensions and Increases of the Commitments.

##### (a) Commitment Reductions.

(i) The Commitment of each Lender shall be automatically reduced to zero on the Commitment Termination Date of such Lender.

(ii) In addition, the Borrower shall have the right, upon at least three Business Days' notice to the Administrative Agent, to terminate in whole or reduce in part the unused portions of the Commitments of the Lenders; provided that the aggregate amount of the Commitments of the Lenders shall not be reduced to an amount which is less than the aggregate principal amount of the Advances then outstanding; and provided further that each partial reduction shall be in an aggregate amount of \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof. Each reduction of the Commitments shall be made pro rata as among the Lenders according to their respective Commitments. Once reduced or terminated, the Commitments may not be reinstated.

(iii) If at any time Consolidated Tangible Net Worth falls below the Initial Threshold, the aggregate amount of Commitments shall automatically be reduced to \$100,000,000 (and, if there are Advances outstanding, the Borrower shall repay the Advances to the extent required by Section 2.10(b)). Each reduction of the Commitments shall be made pro rata as among the Lenders according to their respective Commitments.

##### (b) Commitment Extensions.

(i) The Borrower may, by notice to the Administrative Agent (which shall promptly notify the Lenders) not more than 45 days and not less than 30 days prior to the Commitment Termination Date then in effect hereunder (the "Existing Commitment Termination Date"), request that each Lender extend such Lender's Commitment Termination Date for an additional 364 days from the Existing Commitment Termination Date.

(ii) Each Lender, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not more than 30 days immediately prior to the Existing Commitment Termination Date but in any event no later than the date (the "Notice Date") 20 days prior to the Existing Commitment Termination Date, advise the Administrative Agent whether or not such Lender agrees to such extension (and each Lender that determines not to so extend its Commitment Termination Date (a "Non-Extending Lender") shall notify the Administrative Agent (which shall notify the other Lenders) of such fact promptly after such determination (but in any event no later than the Notice Date) and any Lender that does not so advise the Administrative Agent on or before the Notice Date shall be deemed to be a

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Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree.

(iii) The Administrative Agent shall notify the Borrower of each Lender's determination under this Section 2.04(b) no later than the date 15 days prior to the Existing Commitment Termination Date (or, if such date is not a Business Day, on the next preceding Business Day).

(iv) The Borrower shall have the right on or before the Existing Commitment Termination Date to replace each Non-Extending Lender with, and add as "Lenders" under this Agreement in place thereof, one or more Eligible Assignees (each, an "Additional Commitment Lender") with the approval of the Administrative Agent (which approval shall not be unreasonably withheld), each of which Additional Commitment Lenders shall have entered into an agreement in form and substance satisfactory to the Borrower and the Administrative Agent pursuant to which such Additional Commitment Lender shall, effective as of the Existing Commitment Termination Date, undertake a Commitment (and, if any such Additional Commitment Lender is already a Lender, its Commitment shall be in addition to such Lender's Commitment hereunder on such date); provided that prior to replacing any Non-Extending Lender with any Additional Commitment Lender, the Borrower shall have given each Lender which has agreed to extend its Commitment Termination Date an opportunity to increase its Commitment by all or a portion of the Non-Extending Lenders' Commitments.

(v) If (and only if) the total of the Commitments of the Lenders that have agreed so to extend their Commitment Termination Date and the additional Commitments of the Additional Commitment Lenders shall be more than 50% of the aggregate amount of the Commitments in effect immediately prior to the Existing Commitment Termination Date, then, effective as of the Existing Commitment Termination Date, the Commitment Termination Date of each Extending Lender and of each Additional Commitment Lender shall be extended to the date falling 364 days after the Existing Commitment Termination Date (except that, if such date is not a Business Day, such Commitment Termination Date as so extended shall be the next preceding Business Day) and each Additional Commitment Lender shall thereupon become a "Lender" for all purposes of this Agreement.

(vi) Notwithstanding the foregoing, the extension of the Commitment Termination Date pursuant to this Section 2.04(b) shall be effective only if:

(x) no Default or Event of Default shall have occurred and be continuing on the date of the notice requesting such extension or on the Existing Commitment Termination Date and the representations and warranties set forth in Section 4.01 shall be true and correct in all material respects on and as of each of said dates as if made on and as of said dates (other than any such representation and warranty that expressly speaks as of a date other than the date thereof, in which case such representation and warranty shall be true and correct in all material respects on and as of such other date as if made on and as of said date); and

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(y) the Borrower shall have paid in full all amounts owing to each Non-Extending Lender hereunder on or before the Commitment Termination Date of such Lender.

(c) Commitment Increases.

(i) The Borrower may, not more than once in any 364-day period, propose to increase the aggregate Commitments, by giving notice to the Lenders (through the Administrative Agent) of the amount of such proposed increase (such notice, a "Commitment Increase Offer"). Each Commitment Increase Offer shall offer the Lenders the opportunity to participate in the increased Commitments ratably in accordance with their respective Commitment Percentages. In the event that any Lender (each, a "Declining Lender") shall fail to accept in writing a Commitment Increase Offer within 10 Business Days after receiving the same, all or any portion of the proposed increase in the Commitments offered to the Declining Lenders (the aggregate of such offered amounts, the "Declined Amount") may instead be allocated to any one or more Eligible Assignees pursuant to clause (ii) below and/or to any one or more existing Lenders pursuant to clause (iii) below.

(ii) Any Eligible Assignee which, with the consent of the Borrower and the Administrative Agent (such consents not to be unreasonably withheld), elects to become a party to this Agreement and obtain a Commitment in an amount equal to all or any portion of a Declined Amount shall execute a New Lender Supplement (each, a "New Lender Supplement") with the Borrower and the Administrative Agent, substantially in the form of Exhibit F-1, whereupon such Eligible Assignee (herein called a "New Lender") shall become a Lender for all purposes and to the same extent as if a party hereto and shall be bound by and entitled to the benefits of this Agreement, and Schedule I shall be deemed to be amended to add the name and Commitment of such New Lender; provided that the amount of the Commitment of such New Lender shall in no event be less than \$10,000,000.

(iii) Any Lender which (a) accepts a Commitment Increase Offer or (b) with the consent of the Borrower, elects to increase its Commitment by an amount equal to all or any portion of a Declined Amount shall, in each case, execute a Commitment Increase Supplement (each, a "Commitment Increase Supplement") with the Borrower and the Administrative Agent, substantially in the form of Exhibit F-2, whereupon such Lender shall be bound by and entitled to the benefits of this Agreement with respect to the full amount of its Commitment as so increased, and Schedule I shall be deemed to be amended to so increase the Commitment of such Lender.

(iv) If on the date upon which an Eligible Assignee becomes a New Lender pursuant to clause (ii) or upon which a Lender's Commitment is increased pursuant to clause (i) or (iii) there are Advances outstanding, the Borrower shall, subject to the terms and conditions hereof, borrow Advances from the Lenders and/or (subject to compliance by the Borrower with subsection 8.04(c)) prepay Advances of the Lenders such that, after giving effect thereto, the Advances (including, without limitation, the Types thereof and Interest Periods with respect thereto) shall be held by the Lenders (including for such purposes the New Lenders) pro rata according to their respective Commitment Percentages.

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(v) Notwithstanding the foregoing, (a) in no event shall any transaction effected pursuant hereto cause the aggregate Commitments to exceed \$200,000,000 or cause an increase in the aggregate Commitments of an amount less than \$10,000,000, and (b) no Lender shall have any obligation to increase its Commitment unless it agrees to do so in its sole discretion.

(vi) Notwithstanding the foregoing, in no event shall any transaction be effected pursuant to this Section 2.04(c) unless (i) at the time of and after giving effect to the relevant increase, the Moody's Rating and the Standard & Poor's Rating are at least A3 and A-, respectively, and (ii) no

Default or Event of Default shall have occurred and be continuing on the date of the relevant Commitment Increase Offer or on the date of any Commitment increase resulting therefrom.

SECTION 2.05. Repayment. The Borrower shall repay the then unpaid principal amount of each Advance made by each Lender, and each such Advance shall mature, on the Commitment Termination Date of such Lender.

SECTION 2.06. Interest.

(a) Ordinary Interest. The Borrower shall pay interest on the unpaid principal amount of each Advance made by each Lender, from the date of such Advance until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Advances. While such Advance is a Base Rate Advance, a rate per annum equal to the Base Rate in effect from time to time plus the Applicable Margin for Base Rate Advances as in effect from time to time, payable quarterly in arrears on the last Business Day of each March, June, September and December and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) Eurodollar Rate Advances. While such Advance is a Eurodollar Rate Advance, a rate per annum for each Interest Period for such Advance equal to the sum of the Eurodollar Rate for such Interest Period plus the Applicable Margin for Eurodollar Rate Advances as in effect from time to time, payable on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day which occurs at three-month intervals after the first day of such Interest Period, and on each date on which such Eurodollar Rate Advance shall be Continued, Converted or paid in full.

(b) Default Interest. Notwithstanding the foregoing, if an Event of Default under Section 6.01(a) shall have occurred and be continuing, the Borrower shall pay interest on:

(i) the unpaid principal amount of each Advance owing to each Lender, payable on demand (and in any event in arrears on the dates referred to in Section 2.06(a)(i) or (a)(ii) above), at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum required to be paid on such Advance pursuant to said Section 2.06(a)(i) or (a)(ii), as applicable; provided that if such Event of Default shall be continuing at the end of any Interest Period for any Eurodollar Rate Advance, such

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Advance shall forthwith be Converted to a Base Rate Advance bearing interest as aforesaid in this Section 2.06(b)(i); and

(ii) the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable on demand (and in any event in arrears on the date such amount shall be paid in full), at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum required to be paid on Base Rate Advances pursuant to Section 2.06(a)(i) above.

SECTION 2.07. Additional Interest on Eurodollar Rate Advances. The Borrower shall pay to each Lender additional interest on the unpaid principal amount of each Eurodollar Rate Advance of such Lender for so long as such Lender is maintaining reserves for Eurocurrency Liabilities, from the date of such Advance until such principal amount is paid in full, at an interest rate per annum equal at all times to the remainder obtained by subtracting (i) the Eurodollar Rate for each Interest Period for such Advance from (ii) the rate obtained by dividing such Eurodollar Rate by a percentage equal to 100% minus the Eurodollar Rate Reserve Percentage of such Lender for such Interest Period, payable on each date on which interest is payable on such Advance. Such additional interest shall be determined by such Lender and notified to the Borrower through the Administrative Agent. Such notice shall be in reasonable detail.

SECTION 2.08. Interest Rate Determinations.

(a) Each Reference Bank agrees, upon the request of the Administrative Agent, to furnish to the Administrative Agent timely information for the purpose of determining each Eurodollar Rate. If any one or more of the Reference Banks shall not furnish such timely information to the Administrative Agent for the purpose of determining any such interest rate, the Administrative Agent shall determine such interest rate on the basis of timely information furnished by the remaining Reference Banks (subject to the provisions set forth in the definition of "Eurodollar Rate" in Section 1.01 and to clause (c) below).

(b) The Administrative Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rates determined by the Administrative Agent for the purposes of Section 2.06.

(c) If (1) the relevant rates do not appear on Telerate Page 3750, (2) the relevant rates do not appear on Reuter Page LIBO and (3) fewer than two Reference Banks furnish timely information to the Administrative Agent for determining the Eurodollar Rate for any Interest Period for any Eurodollar Rate Advances,

(i) the Administrative Agent shall forthwith notify the Borrower and the Lenders that the interest rate cannot be determined for such Eurodollar Rate Advances for such Interest Period,

(ii) each Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance, and

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(iii) the obligation of the Lenders to make or Continue, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist.

(d) If, with respect to any Eurodollar Rate Advances, the Majority Lenders notify the Administrative Agent showing calculations in reasonable detail that the Eurodollar Rate for any Interest Period for such Advances will not adequately reflect the cost to such Majority Lenders of making, funding or maintaining their respective Eurodollar Rate Advances for such Interest Period, the Administrative Agent shall forthwith so notify the Borrower and the Lenders, whereupon:

(i) each Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance, and

(ii) the obligation of the Lenders to make or Continue, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify the Borrower and such Lenders that the circumstances causing such suspension no longer exist.

(e) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Administrative Agent will forthwith so notify the Borrower and the Lenders and the Borrower will be deemed to have selected an Interest Period for such Eurodollar Rate Advances of one month.

(f) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than \$10,000,000, such Advances shall automatically Convert into Base Rate Advances.

(g) Upon the occurrence and during the continuance of any Event of Default, (x) each Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance and (y) the obligation of the Lenders to make or Continue, or to Convert Advances into, Eurodollar Rate Advances shall be suspended.

#### SECTION 2.09. Voluntary Conversion and Continuation of Advances.

(a) Optional Conversion. The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than 12:00 noon (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.08 and 2.12, Convert all or any portion of the outstanding Advances of one Type comprising part of the same Borrowing into Advances of the other Type; provided that (i) any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be in an amount not less than the minimum amount specified in Section 2.02(b) and (ii) in the case of any such Conversion of a Eurodollar Rate Advance into a Base Rate Advance on a day other than the last day of an Interest Period therefor, the Borrower shall reimburse the Lenders in respect thereof

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pursuant to Section 8.04(c). Each such notice of a Conversion shall, within the restrictions specified above, specify (x) the date of such Conversion, (y) the Advances to be Converted, and (z) if such Conversion is into Eurodollar Rate Advances, the duration of the initial Interest Period for each such Advance. Each notice of Conversion shall be irrevocable and binding on the Borrower.

(b) Continuations. The Borrower may, on any Business Day, upon notice given to the Administrative Agent not later than 12:00 noon (New York City time) on the third Business Day prior to the date of the proposed Continuation and subject to the provisions of Sections 2.08 and 2.12, Continue all or any portion of the outstanding Eurodollar Rate Advances comprising part of the same Borrowing for one or more Interest Periods; provided that (i) Eurodollar Rate Advances so Continued and having the same Interest Period shall be in an amount not less than the minimum amount specified in Section 2.02(b) and (ii) in the case of any such Continuation on a day other than the last day of an Interest Period therefor, the Borrower shall reimburse the Lenders in respect thereof pursuant to Section 8.04(c). Each such notice of a Continuation shall, within the restrictions specified above, specify (x) the date of such Continuation, (y) the Eurodollar Rate Advances to be Continued and (y) the duration of the initial Interest Period (or Interest Periods) for the Eurodollar Rate Advances subject to such Continuation. Each notice of Continuation shall be irrevocable and binding on the Borrower.

#### SECTION 2.10. Prepayments of Advances.

(a) The Borrower may, on notice given not later than 12:00 noon (New York City time) on the second Business Day prior to the date of the proposed prepayment of Advances (in the case of an Eurodollar Rate Advances) or given not later than 12:00 noon (New York City time) on the Business Day of the proposed prepayment of Advances (in the case of Base Rate Advances), stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the outstanding principal amounts of the Advances comprising part of the same Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; provided, however, that (x) each partial prepayment shall be in an aggregate principal amount not less than \$10,000,000 or integral multiples of \$1,000,000 in excess thereof and (y) in the case of any such prepayment of a Eurodollar Rate Advance on a day other than the last day of an Interest Period therefor, the Borrower shall reimburse the Lenders in respect thereof pursuant to Section 8.04(c).

(b) The Borrower shall forthwith prepay the Advances, together with accrued interest to the date of prepayment and any amounts payable in respect thereof pursuant to Section 8.04(c), in such amount as may be required at any time to assure that the aggregate outstanding principal amount of the Advances does not exceed the aggregate amount of the Commitments.

#### SECTION 2.11. Increased Costs.

(a) If, due to either (i) the introduction of or any change (other than any change by way of imposition or increase of reserve requirements included in the Eurodollar Rate Reserve Percentage) in or in the interpretation of any law or regulation after the date of this Agreement or (ii) the compliance with any guideline or request from any central bank or other governmental authority (whether or not having the force of law) which becomes effective after

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the date of this Agreement, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Eurodollar Rate Advances (excluding Taxes or Other Taxes as to which Section 2.14 shall apply) by an amount deemed by such Lender to be material, then the Borrower shall

from time to time, within 10 Business Days of receipt of demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, in reasonable detail, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, and shall be prima facie evidence of the existence and amounts of the obligations of the Borrower noted therein. Such certificate shall certify that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment, but such Lender shall not be required to disclose any confidential or proprietary information therein.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority which becomes effective after the date hereof (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of this type, then, within 10 Business Days of receipt of demand by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder. A certificate as to such amounts submitted to the Borrower and the Administrative Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error. Such certificate shall be in reasonable detail and shall certify that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment, but such Lender shall not be required to disclose any confidential or proprietary information therein.

(c) Failure or delay on the part of any Lender to demand compensation pursuant to paragraphs (a) or (b) of this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to such paragraph for any increased costs incurred more than 360 days prior to the date that such Lender notifies the Borrower of the change giving rise to such increased costs and of such Lender's intention to claim compensation therefor; provided, further that, if the change giving rise to such increased costs is retroactive, then the 360-day period referred to above shall be extended to include the period of retroactive effect thereof; and provided further, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. If a Lender demands

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compensation under paragraph (a) or (b) of this Section with respect to Eurodollar Advances, the Borrower may, upon at least three Business Days' notice to the Lender (with a copy of such notice to the Administrative Agent), elect that, until the circumstances causing such demand for compensation no longer apply to such Lender, all Eurodollar Rate Advances that would otherwise be made by such Lender as part of any Borrowing shall be made instead as Base Rate Advances and all payments of principal of and interest on such Base Rate Advances shall be made at the same time as payments on the Eurodollar Rate Advances otherwise constituting part of such Borrowing. Each Lender will use all reasonable efforts to give prompt notice to the Borrower of the event giving rise to any such demand for compensation.

SECTION 2.12. Illegality. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for such Lender or its Eurodollar Lending Office to perform its obligations hereunder to make or Continue Eurodollar Rate Advances or to fund or otherwise maintain Eurodollar Rate Advances hereunder, the obligation of such Lender to make or Continue, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances causing such suspension no longer exist; and provided further, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the circumstances permitting such demand and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender; and provided further that if a Lender makes such a demand, the Borrower may, upon at least three Business Days' notice to such Lender (with a copy of such notice to the Administrative Agent), elect that, until the circumstances causing such demand no longer apply to such Lender, all Eurodollar Rate Advances that would otherwise be made by such Lender as part of any Borrowing shall be made instead as Base Rate Advances and all payments or principal of and interest on such Base Rate Advances shall be made at the same time as payments on the Eurodollar Rate Advances otherwise constituting part of such Borrowing.

SECTION 2.13. Payments and Computations.

(a) The Borrower shall make each payment hereunder without set-off or counterclaim not later than 12:00 noon (New York City time) on the day when due in U.S. dollars to the Administrative Agent at its address referred to in Section 8.02 in same day funds. The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, Facility Fee or Utilization Fee ratably (other than amounts payable pursuant to Section 2.02(c), 2.11, 2.14 or 8.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 8.06(d), from and after the effective date specified in such Assignment and Acceptance, the Administrative Agent shall make all payments hereunder in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such

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Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) All computations of interest based on Citibank's base rate shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. All computations of interest based on the Eurodollar Rate or the Federal Funds Rate and of the Facility Fee and the Utilization Fee shall be made by the Administrative Agent, and all computations of interest pursuant to Section 2.07 shall be made by a Lender, on the basis of a year of 360 days,

for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fee is payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(c) Whenever any payment hereunder would be due on a day other than a Business Day, such due date shall be extended to the next succeeding Business Day, and any such extension of such due date shall in such case be included in the computation of payment of interest, Facility Fee or Utilization Fee, as the case may be; provided however that if such extension would cause payment of interest on or principal of Eurodollar Rate Advances to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that the Borrower shall not have so made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent, at the Federal Funds Rate.

#### SECTION 2.14. Taxes.

(a) Any and all payments by the Borrower hereunder shall be made, in accordance with Section 2.13, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Administrative Agent, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction under the laws of which such Lender or the Administrative Agent (as the case may be) is organized or any political subdivision thereof and, in the case of each Lender, taxes imposed on its income, and franchise taxes imposed on it, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any

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Lender or the Administrative Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.14) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, the Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement (hereinafter referred to as "Other Taxes").

(c) The Borrower will indemnify each Lender and the Administrative Agent for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.14) paid by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor. A certificate as to the amount of such Taxes and Other Taxes, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding (as between the Borrower, the Lenders and the Administrative Agent) for all purposes, and shall be prima facie evidence of the existence and amounts of the obligations of the Borrower noted therein.

(d) Within 30 days after the date of any payment of Taxes, the Borrower will furnish to the Administrative Agent, at its address referred to in Section 8.02, the original or a certified copy of a receipt evidencing payment thereof or other proof of payment of such Taxes reasonably satisfactory to the relevant Lender(s). If no Taxes are payable in respect of any payment hereunder, upon the request of the Administrative Agent the Borrower will furnish to the Administrative Agent, at such address, a statement to such effect with respect to each jurisdiction designated by the Administrative Agent.

(e) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement (in the case of each Bank) and on the date of the Assignment and Acceptance or New Lender Supplement pursuant to which it becomes a Lender (in the case of each other Lender), and from time to time thereafter if requested in writing by the Borrower (but only so long as such Lender remains lawfully able to do so), shall provide the Borrower with Internal Revenue Service form W-8BEN or W-8ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from "Taxes" as defined in Section 2.14(a).

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(f) For any period with respect to which a Lender has failed to provide the Borrower with the appropriate form described in Section 2.14(e) (other than if such failure is due to a change in law occurring subsequent to the date on which a form originally was required to be provided, or if such form otherwise is not required under the first sentence of subsection (e) above), such Lender shall not be entitled to indemnification under Section 2.14(a) or (c) with respect to Taxes imposed by the United States; provided, however, that should a Lender become subject to Taxes because of its failure to deliver a form required hereunder, the Borrower shall take such steps as the Lender shall reasonably request to assist the Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.14 shall use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office(s) if the making of such a change would avoid

the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) Any request by any Lender for payment of any amount under this Section 2.14 shall identify with reasonable specificity the basis for calculation of such amount, but such Lender shall not be required to disclose any confidential or proprietary information therein.

**SECTION 2.15. Set-Off; Sharing of Payments, Etc.**

(a) Without limiting any of the obligations of the Borrower or the rights of the Lenders hereunder, if the Borrower shall fail to pay when due (whether at stated maturity, by acceleration or otherwise) any amount payable by it hereunder or under any Note each Lender may, without prior notice to the Borrower (which notice is expressly waived by it to the fullest extent permitted by applicable law), set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final, in any currency, matured or unmatured) and other obligations and liabilities at any time held or owing by such Lender or any branch or agency thereof to or for the credit or account of the Borrower. Each Lender shall promptly provide notice of such set-off to the Borrower, provided that failure by such Lender to provide such notice shall not give the Borrower any cause of action or right to damages or affect the validity of such set-off and application.

(b) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Advances made by it (other than pursuant to Section 2.02(c), 2.11, 2.14 or 8.04(c)) in excess of its ratable share of payments on account of the Advances obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Advances made by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a

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participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

**SECTION 2.16. Right to Replace a Lender.** If (i) the Borrower is required to make any additional payment pursuant to Section 2.11 or 2.14 to any Lender, (ii) if any Lender's obligation to make or Continue, or to Convert Advances into, Eurodollar Rate Advances shall be suspended pursuant to Section 2.12 or (iii) any Lender defaults in its obligation to make Advances hereunder (in each case, such Lender being an "Affected Person"), the Borrower may elect, if such amounts continue to be charged or such suspension is still effective, to replace such Affected Person as a party to this Agreement; provided that no Default or Event of Default shall have occurred and be continuing at the time of such replacement; and provided further that, concurrently with such replacement, (i) another financial institution which is an Eligible Assignee and is reasonably satisfactory to the Borrower and the Administrative Agent shall agree, as of such date, to purchase for cash the Advances of the Affected Person pursuant to an Assignment and Acceptance and to become a Lender for all purposes under this Agreement and to assume all obligations (including all outstanding Advances) of the Affected Person to be terminated as of such date and to comply with the requirements of Section 8.06 applicable to assignments, and (ii) the Borrower shall pay to such Affected Person in same day funds on the day of such replacement all interest, fees and other amounts then due and owing to such Affected Person by the Borrower hereunder to and including the date of termination, including without limitation payments due such Affected Person under Section 2.11 and 2.14.

**SECTION 2.17. Evidence of Indebtedness.**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Advance made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall maintain accounts in which it shall record (i) the date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Advance made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to clause (a) or (b) of this Section 2.17 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Advances in accordance with the terms of this Agreement.

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**ARTICLE 3  
CONDITIONS OF LENDING**

**SECTION 3.01. Conditions Precedent to Initial Borrowing.** The obligation of each Lender to make an Advance on the occasion of the initial Borrowing is subject to the condition precedent that the Administrative Agent shall have received (unless waived) on or before August 28, 2002, the following, each (unless otherwise specified below) dated the Effective Date, in form and substance reasonably satisfactory to the Administrative Agent and (except for the items in clauses (a), (b), (c) and (d)) in sufficient copies for each Lender:

(a) Certified copies of (x) the charter and by-laws of the Borrower, (y) the resolutions of the Board of Directors of the Borrower authorizing and approving this Agreement and the transactions contemplated hereby, and (z) all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to this Agreement;

(b) A certificate of the Secretary or an Assistant Secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign this Agreement and the other documents to be delivered hereunder;

(c) A certificate from the Secretary of State of the State of Delaware dated a date reasonably close to the date hereof as to the good standing of and charter documents filed by the Borrower;

(d) A favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Borrower, substantially in the form of Exhibit C hereto;

(e) A favorable opinion of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to the Administrative Agent, substantially in the form of Exhibit D hereto;

(f) A certificate of a Responsible Officer of the Borrower certifying that (i) no Default or Event of Default as of the date thereof has occurred and is continuing, and (ii) the representations and warranties contained in Section 4.01 are true and correct in all material respects on and as of the date thereof as if made on and as of such date; and

(g) Such other approvals, opinions and documents relating to this Agreement and the transactions contemplated hereby as the Administrative Agent or any Lender may, through the Administrative Agent, reasonably request.

SECTION 3.02. Conditions Precedent to Each Borrowing. The obligation of each Lender to make an Advance on the occasion of each Borrowing (including the initial Borrowing) shall be subject to the further conditions precedent that on the date of such Borrowing the following statements shall be true (and each of the giving of the applicable Notice of Borrowing and the acceptance by the Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by the Borrower that on the date of such Borrowing such statements are true):

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(a) the representations and warranties contained in Section 4.01 (not including, in the case of any Borrowing after the initial Borrowing, the Excluded Representations) are true and correct in all material respects on and as of the date of such Borrowing (other than any such representation and warranty that expressly speaks as of a date other than the date thereof, in which case such representation and warranty shall be true and correct in all material respects on and as of such other date as if made on and as of said date), before and after giving effect to such Borrowing and to the application of the proceeds therefrom, as though made on and as of such date; and

(b) No Event of Default or event, which, with the giving of notice or the passage of time or both, would be an Event of Default, has occurred and is continuing, or would result from such Borrowing or from the application of the proceeds.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Borrower. The Borrower represents, warrants and agrees as follows:

(a) The Borrower and each of its Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) is duly qualified and in good standing as a foreign corporation in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed and where, in each case, failure to so qualify and be in good standing could have a Material Adverse Effect and (iii) has all requisite corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action, and do not (i) contravene the Borrower's charter, by-laws or other organizational documents, (ii) contravene any contractual restriction binding on the Borrower or (iii) violate any law, rule or regulation (including, without limitation, the Securities Act of 1933 and the Exchange Act and the regulations thereunder, and Regulations U and X issued by the Board of Governors of the Federal Reserve System, each as amended from time to time), or order, writ, judgment, injunction, decree, determination or award. The Borrower is not in violation of any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or in breach of any contractual restriction binding upon it, except for such violation or breach which would not have a Material Adverse Effect.

(c) No authorization or approval or other action by, and no notice to or filing with, the SEC or any other Governmental Authority or regulatory body is required (other than those which have been obtained) for the due execution, delivery and performance by the Borrower of this Agreement.

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(d) This Agreement constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

(e) (i) The Borrower has heretofore furnished to each of the Lenders its unaudited Consolidated balance sheet and statements of income, stockholders' equity and cash flows as at and for the three-month period ended March 31, 2002, and such financial statements fairly present, in all material respects, the Consolidated financial condition and results of operations of the Borrower and its Subsidiaries as at the date thereof and for such three-month period, all in accordance with GAAP (subject, in the case of such financial statements as at March 31, 2002, to normal year-end audit adjustments); (ii) the Borrower has heretofore furnished to each of the Lenders its audited Consolidated balance sheet and statements of income, stockholders' equity and cash flows as at and for the fiscal year ended December 31, 2001, and such financial statements fairly present, in all material respects, the Consolidated financial condition and results of operations of the Borrower and its Subsidiaries as at the date thereof and for such fiscal year, all in accordance with GAAP; and (iii) since December 31, 2001, there has been no material adverse change in the business, condition (financial or otherwise), results of operations or prospects of the Borrower and its Subsidiaries, taken as a whole.

(f) Other than as disclosed in filings of the Borrower with the SEC, prior to the date of this Agreement, there is no action pending or threatened in writing or proceeding affecting the Borrower or any of its Subsidiaries before any court, governmental agency or arbitrator which (i) is reasonably likely to have a Material Adverse Effect or (ii) purports to adversely affect this Agreement or the transactions contemplated hereby.

(g) The Borrower is not engaged in the business of extending credit for the purpose of buying or carrying Margin Stock, and no proceeds of any Advance will be used for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. The Borrower is, and after applying the proceeds of each Advance, will be in compliance with its obligations under Section 5.01(b). If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U, the statements made in which shall be such, in the opinion of each Lender, as to permit the transactions contemplated hereby in accordance with Regulation U.

(h) The Borrower is not an "investment company", or a Person "controlled by" an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended.

(i) All written information that has been made available by the Borrower or any of its representatives to the Administrative Agent or any Lender in connection with the negotiation of this Agreement was, on or as of the dates on which such information was made available, complete and correct in all material respects and did not contain any untrue statement of a material fact or omit to state a fact necessary to make the statements contained therein not misleading in light of the time and circumstances under which such

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statements were made. All financial projections that have been prepared by the Borrower and made available to the Administrative Agent or any Lender in connection with the negotiation of this Agreement have been prepared in good faith based upon reasonable assumptions (it being understood that such projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control and no assurance can be given that the projections will be realized). There is no fact known to the Borrower that has had, or would reasonably be expected to have, a Material Adverse Effect and that has not been disclosed herein or in such other documents, certificates and statements furnished to the Lenders for use in connection with the transactions contemplated by this Agreement.

(j) Other than the NASD Employee Retirement Plan, neither the Borrower nor any other member of the Controlled Group maintains, or is obligated to contribute to, any Multiemployer Plan or Multiple Employer Plan or has incurred, or is reasonably expected to incur, any withdrawal liability to any Multiemployer Plan. Each Plan complies in all material respects with all applicable requirements of law and regulations, except where noncompliance would not have a Material Adverse Effect. Neither the Borrower nor any member of the Controlled Group has, with respect to any Plan, failed to make any material contribution or pay any material amount required under Section 412 of the Code or Section 302 of ERISA or the terms of such Plan. The Borrower has not engaged in any prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) in connection with any Plan which may reasonably be expected to have a Material Adverse Effect. Within the last five years neither the Borrower nor any member of the Controlled Group has engaged in a transaction which resulted in a Single Employer Plan or Multiple Employer Plan with an Unfunded Liability being transferred out of the Controlled Group which would reasonably be expected to have a Material Adverse Effect. No Termination Event has occurred or is reasonably expected to occur with respect to any Plan which is subject to Title IV of ERISA.

(k) The Borrower and each of its Significant Subsidiaries is in compliance with all laws, statutes, rules, regulations and orders binding on or applicable to the Borrower, its Subsidiaries and all of their respective properties, except to the extent failure to so comply could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

(l) The Borrower is, and after giving effect to the making of the Advances and the use of proceeds thereof will be, Solvent.

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## ARTICLE 5 COVENANTS OF THE BORROWER

SECTION 5.01. General Covenants. So long as any Commitment remains in effect or any amount remains payable by the Borrower under this Agreement, the Borrower covenants and agrees that:

(a) Financial Reporting. The Borrower will furnish to the Lenders:

(i) As soon as practicable and in any event within 120 days after the close of each of its fiscal years, the consolidated balance sheet of the Borrower and its Consolidated Subsidiaries at the end of such year and the consolidated statements of income, changes in stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries for such year, with the unqualified opinion thereon of independent certified public accountants of nationally recognized standing prepared in accordance with GAAP.

(ii) As soon as practicable and in any event within 75 days after the close of each quarterly period (other than the fourth quarterly period) of each of its fiscal years, for itself and its Subsidiaries, a consolidated unaudited balance sheet as at the close of each such period and consolidated income and cash flow statements for the period from the beginning of such fiscal year to the end of such quarter, all certified by its chief financial officer.

(iii) Together with the financial statements required by clauses (i) and (ii), a compliance certificate in substantially the form of Exhibit E hereto signed by the chief financial officer of the Borrower showing the calculations necessary to determine compliance with the covenants contained in Section 5.02 and stating that no Default or Event of Default exists, or if any Default or Event of Default exists, stating the nature and status thereof.

(iv) As soon as possible and in any event within 30 days after the Borrower knows that any Termination Event has occurred with respect to any Plan, a statement, signed by the chief financial officer of the Borrower or his designee, describing said Termination Event and the action which the Borrower proposes to take with respect thereto.

(v) Promptly upon the filing thereof, copies of all registration statements and annual, quarterly, monthly or other regular reports which the Borrower files with the SEC or any securities exchange.

(vi) Such other information concerning the Borrower and its business as the Administrative Agent or any Lender may from time to time reasonably request.

(b) Use of Proceeds. The Borrower will use the proceeds of the Advances solely for its general corporate purposes; provided that neither the Administrative Agent nor any Lender shall have any responsibility as to the use of any such proceeds.

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(c) Certain Notices. The Borrower will give prompt notice in writing to the Administrative Agent and the Lenders of (i) the occurrence of any Default or Event of Default, (ii) Consolidated Tangible Net Worth falling below the Initial Threshold and any subsequent reduction thereof, together with an indication of the reason for such reduction, and (iii) any other development, financial or otherwise, relating specifically to the Borrower which has had a Material Adverse Effect.

(d) Conduct of Business. The Borrower will, and will cause each Significant Subsidiary to, do all things necessary (if applicable) to remain duly incorporated, validly existing and in good standing as a corporation in its jurisdiction of incorporation and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted except where such failure to remain in good standing or to maintain such authority would not reasonably be expected to have a Material Adverse Effect; provided that nothing herein shall prevent the consummation of a transaction that is expressly excepted from the provisions of Section 6.01(f) by the proviso thereto.

(e) Taxes. The Borrower will, and will cause each Significant Subsidiary to, pay when due all material taxes, assessments and governmental charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside.

(f) Insurance. The Borrower will, and will cause each Significant Subsidiary to, maintain with financially sound and reputable insurance companies insurance on all or substantially all of its Property, or shall maintain self-insurance, in such amounts and covering such risks as is consistent with sound business practice for Persons in substantially the same industry as the Borrower or such Significant Subsidiary, and the Borrower will furnish to any Lender upon request full information as to the insurance carried.

(g) Compliance with Laws. The Borrower will, and will cause each Significant Subsidiary to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject (including ERISA), except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Properties. The Borrower will, and will cause each Significant Subsidiary to, do all things necessary to maintain, preserve, protect and keep its Property in good repair, working order and condition, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times, except where the failure to so maintain, preserve, protect and repair could not reasonably be expected to have a Material Adverse Effect.

(i) Inspection. Subject to Section 8.12, upon the occurrence and during the continuance of an Event of Default, the Borrower will, and will cause each Subsidiary to, permit the Administrative Agent and the Lenders (coordinated through the

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Administrative Agent), by their respective representatives and agents, to inspect any of the Property, corporate books and financial records of the Borrower and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Borrower and each Subsidiary, and to discuss the affairs, finances and accounts of the Borrower and each Subsidiary with, and to be advised as to the same by, their respective officers upon reasonable notice and at such reasonable times and intervals as the Lenders may designate.

(j) Merger. The Borrower will not, nor will it permit any Subsidiary to, merge or consolidate with or into any other Person, except that (a) a Subsidiary may merge into the Borrower or a Wholly-Owned Subsidiary and (b) the Borrower or any Subsidiary may merge or consolidate with any other Person provided that, prior to and after giving effect to such merger or consolidation, no Default or Event of Default shall exist.

(k) Sale of Assets. The Borrower will not, nor will it permit any Subsidiary to, lease, sell or otherwise dispose of all or substantially all of its Property to any other Person(s) in any twelve month period; provided that, any Subsidiary may lease, sell or otherwise dispose of its Property to any other Subsidiary.

(l) Liens. The Borrower will not, nor will it permit any Subsidiary to, create, incur, or suffer to exist any Lien in or on the Property of the Borrower or any of its Subsidiaries, except:

(i) Liens for taxes, assessments or governmental charges or levies on its Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are not material and are paid promptly upon receipt of notice of nonpayment, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(ii) Liens imposed by law, such as carriers', warehousemen's, materialmen, landlord's, carrier's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than 60 days past due or which are being

contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books;

- (iii) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation, including, without limitation, statutory deposits under applicable insurance laws;
- (iv) Liens existing on the Closing Date and described in Schedule II hereto;
- (v) any Lien existing on any Property of any Person at the time such Person becomes a Subsidiary of the Borrower and not created in contemplation of such event; provided that no such Lien shall extend to or cover any other Property;

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(vi) purchase money Liens upon or in any Property acquired or held by the Borrower or any of its Subsidiaries in the ordinary course of business to secure the purchase price of such Property or to secure Indebtedness incurred for the purpose of financing the acquisition, construction or improvement of such Property, or Liens existing on any such Property at the time of or within one year of its acquisition or the completion of the construction or improvement thereof, provided, however, that no such Lien shall extend to or cover any Property other than the Property being acquired, constructed or improved;

(vii) any Lien on any Property of any Person existing at the time such Person is merged, acquired or consolidated with or into the Borrower or a Subsidiary of the Borrower and not created in contemplation of such event, provided that no such Lien shall extend to or cover any other Property;

(viii) any Lien existing on any Property prior to the acquisition thereof by the Borrower or a Subsidiary thereof and not created in contemplation of such acquisition; provided that no such Lien shall extend to or cover any other Property;

(ix) Permitted Liens;

(x) Liens consisting of the interest of the lessor in Property under Capital Lease Obligations; provided, however, that no such Lien shall extend to or cover any Property other than the Property subject to such Capital Lease Obligations;

(xi) Liens arising in connection with repurchase agreements, reverse purchase agreements and other similar agreements for the purchase, sale or loan of securities; provided that no such Lien shall extend to or cover any Property other than the securities thereto;

(xii) Liens on Property of any Subsidiary of the Borrower securing obligations owing to the Borrower or any of its other Subsidiaries;

(xiii) the replacement, extension or renewal of any Lien otherwise permitted under this Section upon or in the same Property theretofore subject thereto; provided that no such extension, renewal or replacement shall extend to or cover any Property not theretofore subject to the Lien being extended, renewed or replaced; and

(xiv) other Liens securing Indebtedness and other obligations up to an aggregate principal amount at any time outstanding and not exceeding 10% of Consolidated Tangible Net Worth.

SECTION 5.02. Financial Covenants. So long as any Commitment remains in effect or any amount remains payable under this Agreement, the Borrower covenants and agrees that:

(a) The Borrower shall not permit the ratio of (i) Consolidated Total Long-Term Indebtedness to (ii) Consolidated Capitalization at any time to be greater than 1.0 to 1.0.

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(b) (i) The Borrower shall not permit Consolidated Tangible Net Worth to be at any time less than the Initial Threshold.

(ii) Notwithstanding the foregoing, Consolidated Tangible Net Worth may be reduced below the Initial Threshold as a result of Share Repurchases, but in no event shall the Borrower permit Consolidated Tangible Net Worth to be at any time less than the sum of (x) \$100,000,000 plus (y) an amount equal to 50% of Consolidated Net Income (if positive) for each fiscal quarter of the Borrower commencing with the fiscal quarter ending September 30, 2002 plus (z) an amount equal to 75% of net proceeds of any public equity offering by the Borrower or any Subsidiary after the date hereof.

(c) The Borrower shall not permit its ratio of (i) Consolidated EBIT for any fiscal quarter of the Borrower to (ii) Consolidated Interest Expense for such fiscal quarter to be less than 2.0 to 1.0.

## ARTICLE 6 EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) The Borrower shall fail to pay any principal of any Advance when the same becomes due and payable; or the Borrower shall fail to pay any interest on any Advance, or any Facility Fee or Utilization Fee, or any other amount whatsoever payable hereunder when due and such failure remains unremedied for five Business Days; or

(b) Any representation or warranty made by the Borrower herein or by the Borrower in connection with this Agreement or any certificate furnished hereunder shall prove to have been incorrect in any material respect when made or deemed made; or

(c) (i) The Borrower shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01(b), (c)(i), (j) or (k) or in Section 5.02 or (ii) the Borrower shall fail to perform or observe in any material respect any other term, covenant or agreement contained in this Agreement on its part to be performed or observed, and such failure remains unremedied for 45 days after notice thereof shall have been given to the Borrower by the Administrative Agent or the Administrative Agent on behalf of any Lender; or

(d) The Borrower or any of its Subsidiaries shall fail to pay any principal of any other Indebtedness of the Borrower which is outstanding in an aggregate principal amount of at least \$50,000,000, or its equivalent in other currencies (in this clause (d) called "Material Indebtedness"), in the aggregate when the same becomes due and payable (whether at scheduled maturity, by required prepayment, acceleration, demand or otherwise); or any other event shall occur or condition shall exist under any agreement or instrument relating to any Material Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of any Material

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Indebtedness, or to require the same to be prepaid or defeased (other than by a regularly required payment); or

(e) The Borrower or any of its Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the Borrower or any of its Subsidiaries, such proceeding shall remain undismissed or unstayed for a period of 60 days; or the Borrower or any of its Subsidiaries shall take any corporate action to authorize any of the actions set forth above in this subsection (e); or

(f) A Change in Control shall occur; provided that it is not an Event of Default if the Borrower: (x) consolidates with or becomes a party to a merger with any other Person or (y) sells, transfers, leases, or otherwise disposes of all or substantially all of its assets to any Person for consideration which represents the fair market value of such assets (as determined in good faith by the Board of Directors of the Company) at the time of such sale or other disposition if (i) the Person (if other than the Borrower) which results from such consolidation or merger or which acquires the assets (the "surviving Person") is a Person organized under the laws of any state of the United States or the District of Columbia or the laws of any country which is a member of the OECD (other than Portugal and Italy), that is primarily engaged in the business of acting as an operator of a securities market or similar to a national securities exchange or national market system under the laws of any such jurisdiction, (ii) the due and punctual payment of the principal, fees, if any, and interest on the Borrowings, and the due and punctual performance and observation of all of the covenants in the credit agreement to be performed or observed by the Borrower are expressly assumed in writing by the surviving Person and the surviving Person shall furnish to the Lenders an opinion of counsel reasonably satisfactory to the Lenders to the effect that the instrument of assumption has been duly authorized, executed and delivered, has been approved by all necessary governmental action, and constitutes the legal, valid and binding contract and agreement of the surviving Person enforceable in accordance with its terms, except as enforcement of such terms may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles, and (iii) at the time of such consolidation or merger and immediately after giving effect thereto, no Default or Event of Default would exist.

(g) Any judgment or order for the payment of money in excess of \$50,000,000 (excluding for purposes of such determination such amount of any insurance proceeds paid on behalf of the Borrower or any of its Subsidiaries in respect of such judgment(s) or order(s) or unconditionally acknowledged in writing to be payable by the insurance carrier that issued the related insurance policy) shall be rendered against the

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Borrower or any of its Subsidiaries and shall remain unsatisfied, and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order and such proceedings shall not have been stayed or (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) The Borrower or any member of its Controlled Group shall terminate, or the PBGC shall institute proceedings under Title IV of ERISA to terminate, or to impose liability (other than for premiums under Section 4007 of ERISA) in respect of, or to cause a trustee to be appointed to administer, any Single Employer Plan or Multiple Employer Plan having Unfunded Liabilities in excess of \$50,000,000;

then, and in any such event, the Administrative Agent (i) shall at the request, or may with the consent, of the Majority Lenders, by notice to the Borrower, declare the obligation of each Lender to make Advances to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Majority Lenders, by notice to the Borrower, declare the Advances, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Advances, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower; provided, however, that in the event of an Event of Default with respect to the Borrower of the kind referred to in clause (e) above, (A) the obligation of each Lender to make Advances shall automatically be terminated and (B) the Advances, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

## ARTICLE 7 THE ADMINISTRATIVE AGENT

SECTION 7.01. Authorization and Action. Each Lender hereby appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms hereof,

together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement (including, without limitation, enforcement or collection of the Advances), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Majority Lenders, and such instructions shall be binding upon all Lenders; provided, however, that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or applicable law. The Administrative Agent agrees to give to each Lender prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement.

SECTION 7.02. Administrative Agent's Reliance, Etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Lenders for any action taken or omitted to be taken by it or them under or in connection with this Agreement, except for its or their own gross negligence or willful misconduct. Without

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limitation of the generality of the foregoing, the Administrative Agent: (i) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable to the Lenders for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Borrower or to inspect the property (including the books and records) of the Borrower or any of its Subsidiaries; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; and (v) shall incur no liability to the Lenders under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopier, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

SECTION 7.03. Citibank and Affiliates. With respect to its Commitment and the Advances made by it, Citibank shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include Citibank in its individual capacity. Citibank and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, the Borrower, any of its Subsidiaries and any Person who may do business with or own securities of the Borrower or any such Subsidiary, all as if Citibank were not the Administrative Agent and without any duty to account therefor to the Lenders.

SECTION 7.04. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

SECTION 7.05. Indemnification. The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower), ratably according to the respective amounts of their Commitments, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Administrative Agent under this Agreement; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements found in a final-non-appealable judgment by a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. Without limiting the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any

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out-of-pocket expenses (including counsel fees) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrower.

SECTION 7.06. Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Administrative Agent that, unless a Default or Event of Default shall have occurred and then be continuing, is reasonably acceptable to the Borrower. If no successor Administrative Agent shall have been so appointed by the Majority Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Majority Lenders' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a commercial bank organized under the laws of the United States of America or of any State thereof and having total assets of at least \$1,000,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

SECTION 7.07. Sole Lead Arranger and Sole Book Manager. The Sole Lead Arranger and Sole Book Manager named on the cover page of this Agreement, in their capacities as such, shall have no obligation, responsibility or required performance hereunder and shall not become liable in any manner hereunder to any party hereto.

**ARTICLE 8  
MISCELLANEOUS**

SECTION 8.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrower and the Majority Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following: (a) increase or extend the Commitments of such Lenders (other than an increase of the Commitments pursuant to Section 2.04(c)), (b) reduce the principal of, or interest on, the Notes or any fees (other than the Administrative Agent's fee referred to in Section 2.03(c)) or other amounts payable hereunder, (c) postpone any date fixed for any payment of principal of, or interest on, the Advances or any fees (other than the Administrative Agent's fee referred to in Section 2.03(c)) or other amounts payable hereunder, (d) change the percentage of the Commitments or of the

aggregate unpaid principal amount of the Advances, or the number of Lenders, which shall be required for the Lenders or any of them to take any action hereunder or (e) amend this Section 8.01; provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement. This Agreement and the agreement referred to in Section 2.03(c) constitute the entire agreement of the parties with respect to the subject matter hereof and thereof.

SECTION 8.02. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and mailed or delivered by hand:

- (a) if to the Borrower:  
The Nasdaq Stock Market, Inc.  
80 Merritt Blvd.  
Trumbull, CT 06611

Attention: Treasury Department

Telephone No.: 203-385-5873

and with a copy to:

The Nasdaq Stock Market, Inc.  
1801 K Street, N.W.  
Washington, D.C. 20006

Attention: Office of General Counsel  
Contracts Group

Telephone No.: 202-728-8875

- (b) if to the Administrative Agent:

Citibank, N.A.  
Two Penns Way, Suite 200  
New Castle, Delaware 19720

Attention: Vincent Farrell

Telephone No.: 302-894-6032  
Telecopier No.: 302-894-6120

- (c) if to any Lender, at the Domestic Lending Office specified in the Administrative Questionnaire of such Lender;

or, as to the Borrower or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other

address as shall be designated by such party in a written notice to the Borrower and the Administrative Agent. All such notices and communications shall be deemed to have been duly given or made (i) in the case of hand deliveries, when delivered by hand, and (ii) in the case of mailed notices, three Business Days after being deposited in the mail, postage prepaid, except that notices and communications to the Administrative Agent pursuant to Article 2 or 7 shall not be effective until received by the Administrative Agent.

SECTION 8.03. No Waiver; Remedies. No failure on the part of any Lender or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8.04. Costs, Expenses and Indemnification.

(a) The Borrower agrees to pay and reimburse on demand all reasonable out-of-pocket costs and expenses of the Administrative Agent and the Arranger in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement and the other documents to be delivered hereunder, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent with respect thereto and with respect to advising the Administrative Agent as to its rights and responsibilities under this Agreement. The Borrower further

agrees to pay promptly all costs and expenses, if any (including, without limitation, reasonable counsel fees and out-of-pocket expenses of the Administrative Agent and each of the Lenders), properly incurred by the Administrative Agent or any Lender in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of this Agreement and the other documents to be delivered hereunder, including, without limitation, reasonable counsel fees and expenses in connection with the enforcement of rights under this Section 8.04(a). Such reasonable fees and out-of-pocket expenses shall be reimbursed by the Borrower upon presentation to the Borrower of a statement of account, regardless of whether this Agreement is executed and delivered by the parties hereto or the transactions contemplated by this Agreement are consummated.

(b) The Borrower hereby agrees to indemnify the Administrative Agent, Salomon Smith Barney Inc., each Lender and each of their respective Affiliates and their respective officers, directors, employees, agents, advisors and representatives (each, an “Indemnified Party”) from and against any and all direct claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and out-of-pocket disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Advances, whether or not such investigation, litigation or proceeding is brought by the Borrower, any of its stockholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in Article 3 are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such direct claim, damage, loss, liability or expense is found

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in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. The Borrower agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Borrower for or in connection with or relating to this Agreement or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Advances, except to the extent such liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct, and the Borrower waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 8.04 any special, exemplary, punitive or consequential damages. The agreements in this Section 8.04(b) shall survive repayment of the Borrowings and all other amounts payable hereunder.

(c) If any payment of principal of, or Conversion or Continuation of, any Eurodollar Rate Advance is made other than on the last day of an Interest Period for such Advance as a result of any optional or mandatory prepayment, acceleration of the maturity of the Advances pursuant to Section 6.01 or for any other reason, the Borrower shall pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses (other than loss of profit) which it may reasonably incur as a result of such payment, Continuation or Conversion and the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Advance. A certificate as to the amount of such losses, costs and expenses, submitted to the Borrower and the Administrative Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

SECTION 8.05. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Bank that such Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 8.06. Assignments and Participations.

(a) Each Lender may, with notice to and the consent of the Administrative Agent and, unless an Event of Default shall have occurred and be continuing, the Borrower (such consents not to be unreasonably withheld), assign to one or more banks or other entities all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it); provided that:

(i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations of the assigning Lender under this Agreement,

(ii) except in the case of an assignment by a Lender to one of its Affiliates or to another Lender, the amount of the Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and

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Acceptance with respect to such assignment) shall in no event (unless the Borrower and the Administrative Agent otherwise agree) be less than the lesser of (x) such Lender’s Commitment hereunder and (y) \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof,

(iii) each such assignment shall be to an Eligible Assignee,

(iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, an Assignment and Acceptance, and

(v) the parties to each such assignment (other than the Borrower) shall deliver to the Administrative Agent a processing and recordation fee of \$3,500.

Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 4.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

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(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed (and the Borrower and the Administrative Agent shall have consented to the relevant assignment) and is in substantially the form of Exhibit B hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower.

(d) The Administrative Agent shall maintain at its address referred to in Section 8.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of each of the Lenders and, with respect to Lenders, the Commitment of, and principal amount of the Advances owing to, each such Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for the purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Each Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment and the Advances owing to it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment to the Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (iv) no participant under any such participation agreement shall have any right to approve any amendment or waiver of any provision of this Agreement, or to consent to any departure by the Borrower therefrom, except to the extent that any such amendment, waiver or consent would (x) reduce the principal of, or interest on, the Notes, in each case to the extent the same are subject to such participation, or (y) postpone any date fixed for the payment of principal of, or interest on, the Advances, in each case to the extent the same are subject to such participation.

(f) Any Lender may, in connection with any permitted assignment or participation or proposed assignment or participation pursuant to this Section 8.06 and subject to the provisions of Section 8.12, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower or any of its Subsidiaries or Affiliates furnished to such Lender by or on behalf of the Borrower.

(g) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time, without the consent of the Administrative Agent or the Borrower, create a security interest in all or any portion of its rights under this Agreement (including, without limitation, the Advances owing to it) in favor of any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System.

(h) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time, with notice to but without the consent of the Administrative Agent or

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the Borrower, assign to an Affiliate of such Lender (excluding any Affiliate of such Lender primarily engaged in the insurance or mutual fund business) all or any portion of its rights (but not its obligations) under this Agreement.

SECTION 8.07. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 8.08. Severability. In case any provision in this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be severable from the rest of this Agreement, as the case may be, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 8.09. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Any counterpart hereof may be executed and delivered via telecopier, and each such counterpart so executed and delivered shall have the same force and effect as an originally executed and delivered counterpart hereof.

SECTION 8.10. Survival. The obligations of the Borrower under Sections 2.02(c), 2.14 and 8.04, and the obligations of the Lenders under Sections 7.05 and 8.12, shall survive the payment of all amounts owing under this Agreement and the termination of the Commitments. In addition, each representation and warranty made, or deemed to be made by any Notice of Borrowing, herein or pursuant hereto shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any Advance, any Default or Event of Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender or the Administrative Agent

may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

SECTION 8.11. Waiver of Jury Trial. EACH OF THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 8.12. Confidentiality. Each Lender agrees to hold any confidential information which it may receive from the Borrower or any of its Subsidiaries or Affiliates pursuant to this Agreement in confidence and for use in connection with this Agreement, including without limitation, for use in connection with its rights and remedies hereunder, except for disclosure (a) to other Lenders and their respective Affiliates, (b) to legal counsel, accountants, and other professional advisors to such Lender, (c) to regulatory officials, (d) as requested pursuant to or as required by law, regulation, or legal process, (e) in connection with any legal proceeding to which such Lender is a party and (f) to a proposed assignee or participant permitted under Section 8.06 which shall have agreed in writing for the benefit of the Borrower

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and its Subsidiaries and Affiliates to keep such disclosed confidential information confidential in accordance with this Section.

SECTION 8.13. Relationship. The relationship between the Borrower and the Lenders and the Administrative Agent shall be solely that of borrower and lender. Neither the Administrative Agent nor any Lender shall have any fiduciary responsibilities to the Borrower. Neither the Administrative Agent nor any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

Borrower

THE NASDAQ STOCK MARKET, INC.

By /s/ Richard G. Ketchum  
Name: Richard G. Ketchum  
Title: President

By /s/ David P. Warren  
Name: David P. Warren  
Title: Executive Vice President  
and Chief Financial Officer

Administrative Agent

CITIBANK, N.A.,  
as Administrative Agent

By /s/ Robert A. Danziger  
Name: Robert A. Danziger  
Title: Attorney-in-Fact

Banks

CITIBANK, N.A.

By /s/ Robert A. Danziger  
Name: Robert A. Danziger  
Title: Attorney-in-Fact

CREDIT LYONNAIS NEW YORK BRANCH

By /s/ W.S. Denton  
Name: W.S. Denton  
Title: Senior Vice President

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BANK ONE, N.A.

By /s/ Andrea S. Kantor  
Name: Andrea S. Kantor  
Title: Director

FIFTH THIRD BANK

By /s/ Ann Pierson  
Name: Ann Pierson  
Title: Corporate Banking Officer

RIGGS BANK, N.A.

By /s/ Edward J. Goedecke  
Name: Edward J. Goedecke  
Title: Vice President

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**SCHEDULE I**

Banks and Commitments

| <u>Bank</u>                     | <u>Commitment</u> |
|---------------------------------|-------------------|
| Citibank, N.A.                  | \$ 45,000,000     |
| Credit Lyonnais New York Branch | 40,000,000        |
| Bank One, N.A.                  | 25,000,000        |
| Fifth Third Bank                | 25,000,000        |
| Riggs Bank, N.A.                | 15,000,000        |
| Total                           | \$ 150,000,000    |

Schedule I

**SCHEDULE II**

Existing Liens

| <u>Secured Party</u>   | <u>Jurisdiction</u> | <u>Date Filed</u> | <u>File #</u>    |
|--|---------------------|-------------------|------------------|
| 1. Crestar Bank  | Connecticut         | 5/22/97           | 0001773025       |
| 2. MCI Telecommunications Corporation assigned to General Electric Capital Corporation | Connecticut         | 5/26/98           | 0001860          |
| 3. Leasetec Corporation  | Connecticut         | 7/24/00           | 0002011460       |
| 4. The Manifest Group  | Connecticut         | illegible         | 00PN10777        |
| 5. The Manifest Group  | Connecticut         | 5/31/00           | 00PN27274        |
| 6. Crestar Bank  | Maryland            | 5/20/97           | 230B2110053      |
| 7. IBM Corporation   | Maryland            | 8/29/00           | 1000218501000000 |
| 8. Varilease Corporation   | Maryland            | 10/29/96          | 087B2110001      |
| 9. MCI Telecommunications Corporation assigned to General Electric                     | New York            | 6/25/98           | 136359           |



## ASSIGNMENT AND ACCEPTANCE

Dated \_\_\_\_\_,

Reference is made to the 364-Day Credit Agreement dated as of August 29, 2002 (as from time to time amended, the "Credit Agreement") among The Nasdaq Stock Market, Inc., a Delaware corporation (the "Borrower"), the Lenders (as defined in the Credit Agreement) and Citibank, N.A., as Administrative Agent for the Lenders (the "Administrative Agent"). Terms defined in the Credit Agreement are used herein with the same meaning.

(the "Assignor") and (the "Assignee") agree as follows:

1. The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, that interest in and to all of the Assignor's rights and obligations under the Credit Agreement as of the date hereof which represents the percentage interest specified on Schedule 1 of all outstanding rights and obligations under the Credit Agreement, including, without limitation, such interest in the Assignor's Commitment and the Advances owing to the Assignor. After giving effect to such sale and assignment, the Assignee's Commitment and the amount of the Advances owing to the Assignee will be as set forth in Schedule 1.

2. The Assignor (i) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement or any other instrument or document furnished pursuant thereto; and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Credit Agreement or any other instrument or document furnished pursuant thereto.

3. The Assignee (i) confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements referred to in Section 4.01 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (ii) agrees that it will, independently and without reliance upon the Administrative Agent, the Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iii) confirms that it is an Eligible Assignee; (iv) appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; (v) agrees that it

Assignment and Acceptance

will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender; [and] (vi) specifies as its Domestic Lending Office (and address for notices) and Eurodollar Lending Office the offices set forth beneath its name on the signature pages hereof [and (vii) attaches the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's status for purposes of determining exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Credit Agreement or such other documents as are necessary to indicate that all such payments are subject to such rates at a rate reduced by an applicable tax treaty].(1)

4. Following the execution of this Assignment and Acceptance by the Assignor and the Assignee and the consent of the Borrower, it will be delivered to the Administrative Agent for acceptance and recording by the Administrative Agent. The effective date of this Assignment and Acceptance shall be the date of acceptance thereof by the Administrative Agent, unless otherwise specified on Schedule 1 hereto (the "Effective Date").

5. Upon such acceptance and recording by the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance, have the rights and obligations of a Lender thereunder and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance, relinquish its rights and be released from its obligations under the Credit Agreement.

6. Upon such acceptance and recording by the Administrative Agent, from and after the Effective Date, the Administrative Agent shall make all payments under the Credit Agreement in respect of the interest assigned hereby (including, without limitation, all payments of principal, interest, Facility Fee and Utilization Fee with respect thereto) to the Assignee. The Assignor and Assignee shall make all appropriate adjustments in payments under the Credit Agreement for periods prior to the Effective Date directly between themselves.

7. This Assignment and Acceptance shall be governed by, and construed in accordance with, the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed by their respective officers thereunto duly authorized, as of the date first above written, such execution being made on Schedule 1 hereto.

(1) If the Assignee is organized under the laws of a jurisdiction outside the United States.

Assignment and Acceptance

Percentage assigned to Assignee %

Assignee's Commitment \$

Aggregate outstanding principal amount of Advances assigned \$

Effective Date (if other than date of acceptance by Administrative Agent)\*

[NAME OF ASSIGNOR], as Assignor

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

[NAME OF ASSIGNEE], as Assignee

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

Domestic Lending Office:

Eurodollar Lending Office:

\* This date should be no earlier than the date of acceptance by the Administrative Agent.

Accepted this \_\_\_\_\_ day of \_\_\_\_\_,

CITIBANK, N.A., as Administrative Agent

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

CONSENTED TO:

THE NASDAQ STOCK MARKET, INC.

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

EXHIBIT C

[Form of Opinion of Special Counsel to the Borrower]

[date]

To each Bank listed on Schedule I hereto

Re: The Nasdaq Stock Market, Inc. Credit Agreement

Ladies and Gentlemen:

We have acted as special counsel to The Nasdaq Stock Market, Inc., a Delaware corporation (the "Company"), in connection with the preparation, execution and delivery of the 364-Day Credit Agreement dated as of August 29, 2002 (the "Credit Agreement"), among the Company, Citibank, N.A., as administrative agent (in such capacity, the "Agent"), Salomon Smith Barney Inc. as sole lead arranger and sole book manager and the Banks (as defined in the Credit Agreement) and certain other agreements, instruments and documents related to the Credit Agreement. This opinion is being delivered pursuant to Section 3.01(d) of the Credit Agreement.

In our examination we have assumed the genuineness of all signatures including endorsements, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. As to any facts material to this opinion which we did not independently

establish or verify, we have relied upon statements and representations of the Company and its officers and other representatives and of public officials, including the facts and conclusions set forth therein. Capitalized terms used herein and not otherwise defined herein shall have the same meanings herein as ascribed thereto in the Credit Agreement.

In rendering the opinions set forth herein, we have examined and relied on originals or copies of the following:

(a) the Credit Agreement;

(b) the certificate of [David P. Warren, Executive Vice President and Chief Financial Officer] of the Company, dated the date hereof, a copy of which is attached as Exhibit A hereto (the "Officer's Certificate");

(c) certified copies of the Restated Certificate of Incorporation and By-laws of the Company;

Opinion of Counsel of the Borrower

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(d) a certified copy of certain resolutions of the Board of Directors of the Company adopted on March 13, 2002;

(e) a certificate, dated August 19, 2002, from the Secretary of State of the State of Delaware as to the Company's existence and good standing in the State of Delaware; and

(f) such other documents as we have deemed necessary or appropriate as a basis for the opinions set forth below.

We express no opinion as to the laws of any jurisdiction other than (i) the Applicable Laws of the State of New York, (ii) the Applicable Laws of the United States of America (including, without limitation, Regulations U and X of the Federal Reserve Board) and (iii) the General Corporation Law of the State of Delaware (the "DGCL").

"Applicable Contracts" mean those agreements or instruments set forth on Schedule I to the Officer's Certificate and which have been identified to us as all the agreements and instruments which are material to the business or financial condition of the Company. "Applicable Laws" shall mean those laws, rules and regulations which, in our experience, are normally applicable to transactions of the type contemplated by the Credit Agreement, without our having made any special investigation as to the applicability of any specific law, rule or regulation, and which are not the subject of a specific opinion herein referring expressly to a particular law or laws. "Governmental Approval" means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any governmental authority pursuant to the Applicable Laws of the State of New York, the Applicable Laws of the United States of America (including, without limitation, Regulations U and X of the Federal Reserve Board) and the DGCL. "Applicable Orders" means those orders or decrees of governmental authorities identified on Schedule II to the Officer's Certificate.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions set forth herein, we are of the opinion that:

1. Based solely on our review of the certificate described in clause (e) above, the Company has been duly formed and is validly existing and in good standing under the Applicable Laws of the State of Delaware.

2. The Company has the corporate power and authority to execute, deliver and perform all of its obligations under the Credit Agreement under the Applicable Laws of the State of Delaware. The execution and delivery of the Credit Agreement and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all requisite corporate action on the part of the Company under the Applicable Laws of the State of Delaware. The Credit Agreement has been duly executed and delivered by the Company under the Applicable Laws of the State of Delaware.

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3. The Credit Agreement constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms under the Applicable Laws of the State of New York.

4. The execution and delivery by the Company of the Credit Agreement and the performance by the Company of its obligations under the Credit Agreement, in accordance with its terms, does not (i) conflict with the Restated Certificate of Incorporation or By-laws of the Company, (ii) constitute a violation of, or a default under, any Applicable Contracts or (iii) cause the creation of any security interest or lien upon any of the property of the Company pursuant to any Applicable Contracts. We do not express any opinion, however, as to whether the execution, delivery or performance by the Company of the Credit Agreement will constitute a violation of, or a default under, any covenant, restriction or provision with respect to financial ratios or tests or any aspect of the financial condition or results of operations of the Company. We call to your attention that certain of the Applicable Contracts are governed by laws other than those as to which we express our opinion. We express no opinion as to the effect of such other laws on the opinions herein stated.

5. Neither the execution, delivery or performance by the Company of the Credit Agreement nor the compliance by the Company with the terms and provisions thereof will contravene any provision of any Applicable Law of the State of New York, the DGCL or any Applicable Law of the United States of America.

6. No Governmental Approval, which has not been obtained or taken and is not in full force and effect, is required to authorize, or is required in connection with, the execution or delivery of any of the Credit Agreement by the Company or the enforceability of any of the Credit Agreement against the Company except those Governmental Approvals set forth in Schedule III to the Officer's Certificate.

7. Neither the execution, delivery or performance by the Company of its obligations under the Credit Agreement nor compliance by the Company with the terms thereof will contravene any Applicable Order against the Company.

8. The Company is not and, solely after giving effect to the Credit Agreement and the application of the proceeds thereof as described therein, will not be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

Our opinions are subject to the following assumptions and qualifications:

(a) enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(b) we have assumed that the Credit Agreement constitutes the valid and binding obligation of each party to the Credit Agreement (other than the Company) enforceable against such other party in accordance with its terms;

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(c) the execution, delivery and performance of any of its obligations under the Credit Agreement do not and will not conflict with, contravene, violate or constitute a default under (i) any lease, indenture, instrument or other agreement to which the Company or its property is subject (other than the Applicable Contracts as to which we express our opinion in paragraph 4 herein), (iii) any rule, law or regulation to which the Company is subject (other than Applicable Laws of the State of New York, the DGCL and Applicable Laws of the United States of America as to which we express our opinion in paragraph 5 herein) or (iv) any judicial or administrative order or decree of any governmental authority (other than Applicable Orders as to which we express our opinion in paragraph 7 herein);

(d) no authorization, consent or other approval of, notice to or filing with any court, governmental authority or regulatory body (other than Governmental Approvals as to which we express our opinion in paragraph 6 herein) is required to authorize or is required in connection with the execution, delivery or performance by the Company of the Credit Agreement or the transactions contemplated thereby;

(e) we express no opinion as to the effect on the opinions expressed herein of (i) the compliance or non-compliance of the Agent or any party (other than the Company) to the Credit Agreement with any state, federal or other laws or regulations applicable to them or (ii) the legal or regulatory status or the nature of the business of any party;

(f) we express no opinion as to the enforceability of any rights to contribution or indemnification provided for in the Credit Agreement which are violative of the public policy underlying any law, rule or regulation (including any federal or state securities law, rule or regulation);

(g) we express no opinion on the enforceability of any provision in the Credit Agreement purporting to prohibit, restrict or condition the assignment of rights under the Credit Agreement to the extent such restriction on assignability is governed by the Uniform Commercial Code; and

(h) we express no opinion with respect to any provision of the Credit Agreement to the extent it authorizes or permits any purchaser of a participation interest to set -off or apply any deposit, property or indebtedness with respect to any participation interest.

This opinion is being furnished only to you in connection with the Credit Agreement and is solely for your benefit and is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person or entity for any purpose without our prior written consent.

Very truly yours,

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**EXHIBIT D**

[Form of Opinion of Special New York  
Counsel to the Administrative Agent]

[date]

To the Banks party to the  
Credit Agreement referred to  
below  
Citibank, N.A., as Administrative  
Agent  
388 Greenwich Street  
New York, New York 10013

Ladies and Gentlemen:

We have acted as special New York counsel to Citibank, N.A. (the "Administrative Agent"), as Administrative Agent, in connection with the 364-Day Credit Agreement dated as of August 29, 2002 (the "Credit Agreement") among The Nasdaq Stock Market, Inc. (the "Borrower"), the lenders named therein and the Administrative Agent, providing for loans to be made by said lenders to the Borrower in an aggregate principal amount not exceeding \$150,000,000. Terms defined in the Credit Agreement are used herein as defined therein. This opinion is being delivered pursuant to Section 3.01(e) of the Credit Agreement.

In rendering the opinions expressed below, we have examined the Credit Agreement. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies.

In rendering the opinions expressed below, we have assumed, with respect to the Credit Agreement, that:

- (i) the Credit Agreement has been duly authorized by, have been duly executed and delivered by, and (except to the extent set forth in the opinions below as to the Borrower) constitutes legal, valid, binding and enforceable obligations of, all of the parties thereto;
- (ii) all signatories to the Credit Agreement have been duly authorized;
- (iii) all of the parties to the Credit Agreement are duly organized and validly existing and have the power and authority (corporate or other) to execute, deliver and perform the Credit Agreement; and

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- (iv) all governmental approvals required for the Borrower to make and perform the Credit Agreement have been obtained and are in full force and effect.

Based upon and subject to the foregoing and subject also to the comments and qualifications set forth below, and having considered such questions of law as we have deemed necessary as a basis for the opinions expressed below, we are of the opinion that the Credit Agreement constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of the Credit Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, (a) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (b) concepts of materiality, reasonableness, good faith and fair dealing.

The foregoing opinions are subject to the following comments and qualifications:

- (a) The enforceability of Section 8.04(b) of the Credit Agreement may be limited by laws limiting the enforceability of provisions exculpating or exempting a party from, or requiring indemnification of a party for, its own action or inaction, to the extent such action or inaction involves gross negligence, recklessness or willful or unlawful conduct.
- (b) The enforceability of provisions in the Credit Agreement to the effect that terms may not be waived or modified except in writing may be limited under certain circumstances.
- (c) We express no opinion as to (i) the effect of the laws of any jurisdiction in which any Lender is located (other than the State of New York) that limit the interest, fees or other charges such Lender may impose, or (ii) Section 2.15 of the Credit Agreement.

The foregoing opinions are limited to matters involving the Federal laws of the United States and the law of the State of New York, and we do not express any opinion as to the laws of any other jurisdiction.

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This opinion letter is, pursuant to Section 3.01(e) of the Credit Agreement, provided to you by us in our capacity as special New York counsel to the Administrative Agent and may not be relied upon by any Person for any purpose other than in connection with the transactions contemplated by the Credit Agreement without, in each instance, our prior written consent.

Very truly yours,

WFC/RW

[File No. 26653-47100]

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**EXHIBIT E**

COMPLIANCE CERTIFICATE

To: The Lenders parties to the  
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain 364-Day Credit Agreement dated as of August 29, 2002 (as amended, modified, renewed or extended from time to time, the "Agreement") among the Borrower, the banks named therein, Salomon Smith Barney Inc., as Sole Arranger and Book Manager and Citibank, N.A., as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the duly elected Chief Financial Officer of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower and its Subsidiaries during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default or an Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. Schedule I attached hereto sets forth financial data and computations evidencing the Borrower's compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

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The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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**Schedule I to  
Compliance Certificate**

SCHEDULE I TO COMPLIANCE CERTIFICATE

Schedule of Compliance as of [ \_\_\_\_\_ ] with  
Provisions of Sections 5.02(a), 5.02(b) and 5.02(c) of  
the Agreement

|                           |   |    |                          |
|---------------------------|---|----|--------------------------|
| 1. <u>Section 5.02(a)</u> |   |    |                          |
| A.                        | Consolidated Total Long-Term Indebtedness           | \$ |                          |
| B.                        | Consolidated Capitalization                         | \$ |                          |
| C.                        | Ratio of A to B                                     |    | :1.0                     |
| D.                        | Permitted Ratio                                     |    | Not greater than 1.0:1.0 |
|                           | Complies      Does Not Comply                       |    |                          |
| 2. <u>Section 5.02(b)</u> |   |    |                          |
| A.                        | Consolidated Tangible Net Worth                     | \$ |                          |
| B.                        | 50% of Consolidated Net Income (if positive)        | \$ |                          |
| C.                        | 75% of net proceeds from any public equity offering |    |                          |
| D.                        | Sum of (i) \$175,000,000, (ii) B and (iii) C:       | \$ |                          |
| E.                        | Comparison of A and D                               |    | A $\geq$ / $\leq$ D      |
|                           | Complies      Does Not Comply                       |    |                          |
| 3. <u>Section 5.02(c)</u> |   |    |                          |
| A.                        | Consolidated EBIT                                   | \$ |                          |
| B.                        | Consolidated Interest Expense                       | \$ |                          |
| C.                        | Ratio of A to B                                     |    | :1.0                     |

Complies Does Not Comply

EXHIBIT F-1

[FORM OF NEW LENDER SUPPLEMENT]

SUPPLEMENT, dated , to the Credit Agreement dated as of August 29, 2002 (as the same may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among THE NASDAQ STOCK MARKET, INC., a corporation organized under the laws of Delaware (the "Borrower"), the several banks and other financial institutions parties thereto (the "Lenders"), and CITIBANK, N.A., as administrative agent (in such capacity, the "Administrative Agent") for the Lenders.

WITNESSETH:

WHEREAS, the Credit Agreement provides in subsection 2.04(c)(ii) thereof that any bank, financial institution or other entity, although not originally a party thereto, may become a party to the Credit Agreement with the consent of the Borrower and the Administrative Agent by executing and delivering to the Borrower and the Administrative Agent a supplement to the Credit Agreement in substantially the form of this Supplement; and

WHEREAS, the undersigned was not an original party to the Credit Agreement but now desires to become a party thereto;

NOW, THEREFORE, the undersigned hereby agrees as follows:

1. The undersigned agrees to be bound by the provisions of the Credit Agreement, and agrees that it shall, on the date this Supplement is accepted by the Borrower and the Administrative Agent, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a Commitment of \$ .

2. The undersigned (a) represents and warrants that it is legally authorized to enter into this Supplement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the financial statements delivered pursuant to subsection 3.01 thereof and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it has made and will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement or any instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as administrative agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender including, without limitation, if it is organized under the laws of a jurisdiction outside the United States, its obligation pursuant to subsection 2.14(e) of the Credit Agreement.

3. The undersigned's address for notices for the purposes of the Credit Agreement is as follows:

4. Terms defined in the Credit Agreement shall have their defined meanings when used herein.

IN WITNESS WHEREOF, the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF LENDER]

By \_\_\_\_\_
Name:
Title:

Accepted this day of , .

THE NASDAQ STOCK MARKET, INC.

By \_\_\_\_\_
Name:
Title:

Accepted this day of , .

CITIBANK, N.A., as Administrative Agent

By \_\_\_\_\_
Name:
Title:

[FORM OF COMMITMENT INCREASE SUPPLEMENT]

SUPPLEMENT, dated \_\_\_\_\_, to the Credit Agreement dated as of August 29, 2002 (as the same may be amended, supplemented otherwise modified from time to time, the "Credit Agreement"), among THE NASDAQ STOCK MARKET, INC., a corporation organized under the laws of Delaware (the "Borrower"), the several banks and other financial institutions parties thereto (the "Lenders"), and CITIBANK, N.A., as administrative agent (in such capacity, the "Administrative Agent") for the Lenders.

WITNESSETH:

WHEREAS, the Credit Agreement provides in subsection 2.04(c) thereof that any Lender with (when applicable) the consent of the Borrower may increase the amount of its Commitment by executing and delivering to the Borrower and the Administrative Agent a supplement to the Credit Agreement in substantially the form of this Supplement; and

WHEREAS, the undersigned now desires to increase the amount of its Commitment under the Credit Agreement;

NOW THEREFORE, the undersigned hereby agrees as follows:

1. The undersigned agrees, subject to the terms and conditions of the Credit Agreement, that on the date this Supplement is accepted by the Borrower and the Administrative Agent it shall have its Commitment increased by \$ \_\_\_\_\_, thereby making the amount of its Commitment \$ \_\_\_\_\_.
2. Terms defined in the Credit Agreement shall have their defined meanings when used herein.

IN WITNESS WHEREOF, the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF LENDER]

By \_\_\_\_\_  
Name:  
Title:

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE NASDAQ STOCK MARKET, INC.

By \_\_\_\_\_  
Name:  
Title:

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITIBANK, N.A., as Administrative Agent

By \_\_\_\_\_  
Name:  
Title:

**MASTER AGREEMENT**

dated as of

February 6, 2002

among

**National Association of Securities Dealers, Inc.****The Nasdaq Stock Market, Inc.****American Stock Exchange Membership Corporation****Nasdaq Financial Products Services, Inc.**

and

**American Stock Exchange, LLC****MASTER AGREEMENT**

**This Master Agreement**, dated as of February 6, 2002 (*Effective Date*), is made by and among the National Association of Securities Dealers, Inc., a Delaware nonprofit corporation with its principal place of business located at 1735 K Street, N.W., Washington, DC 20006 (*NASD*), The Nasdaq Stock Market, Inc., a Delaware corporation with its principal place of business located at One Liberty Plaza, 165 Broadway, New York, New York 10006 (*Nasdaq*), and the American Stock Exchange, LLC, a Delaware limited liability corporation with its principal place of business located at 86 Trinity Place, New York, New York 10006 (*Amex*) (NASD, Nasdaq and Amex are collectively referred to herein as the *Parties* and individually as a *Party*), and, for certain provisions, the American Stock Exchange Membership Corporation, a New York Type A not-for-profit corporation with its principal place of business located at 86 Trinity Place, New York, New York 10006 (*Old Amex*) and Nasdaq Financial Products Services, Inc., a Delaware corporation (*Nasdaq FPS*) (collectively, with the Parties, the *Participants*).

**RECITALS**

**WHEREAS**, in 1998, pursuant to the Transaction Documents, among other things, (i) Amex acquired substantially all the assets of and assumed certain liabilities of Old Amex in consideration for a Class A membership interest in Amex, and (ii) the NASD and NASD Market Holding Company (later known as The Nasdaq-Amex Market Group, Inc. (*Market Group*)) made commitments to Amex, including, without limitation, subject to certain conditions, that specific technology and related services would be provided to Amex, all as specified in the Transaction Documents;

**WHEREAS**, the Market Group no longer exists and: (i) the NASD's interest in the Market Group has been transferred to New NASD Holding Company, Inc (*New Holdco*); and (ii) the NASD has assumed any remaining obligations of the Market Group;

**WHEREAS**, the NASD and Nasdaq, formerly a wholly-owned Subsidiary of the NASD, have taken corporate actions to restructure and recapitalize Nasdaq through: (i) a two phase private placement of Nasdaq securities with the first phase closing on June 28, 2000 and the second phase closing on January 18, 2001; and (ii) the sale and issuance of \$240 million convertible subordinated debentures of Nasdaq to Hellman & Friedman Capital Partners IV, L.P. and certain of its affiliated limited partnerships, the proceeds from which were used to repurchase shares of Nasdaq common stock owned by the NASD; and the result of which is that Nasdaq is no longer a wholly-owned Subsidiary of the NASD;

**WHEREAS**, the NASD, Nasdaq and Amex now intend to provide for certain transfers of Nasdaq Technology to Amex and enter into certain business arrangements; and

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**WHEREAS**, the Participants wish to govern their ongoing relationships as of the Effective Date by the terms and conditions of this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and the covenants and agreements set forth below and for good and valuable consideration, the Participants, hereby agree as follows:

**ARTICLE 1****Definitions and Construction.**

**Section 1.01 Defined Terms**. Capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Transaction Agreement (as hereinafter defined). The following terms, as used herein, shall have the following meanings:

**"Affiliate"** of any specified Person means any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such specified Person. It is understood, *however*, that none of the NASD, Nasdaq or any Person directly or indirectly Controlled by Nasdaq shall be considered an Affiliate of Amex; none of the NASD, Amex or any Person directly or indirectly Controlled by Amex shall be considered an Affiliate of

Nasdaq; and none of Nasdaq, any Person directly or indirectly Controlled by Nasdaq, Amex or any Person directly or indirectly Controlled by Amex shall be considered an Affiliate of the NASD.

**“Agreement”** means this Master Agreement by and among the NASD, Nasdaq, Amex, Old Amex and Nasdaq FPS and any exhibits to this Agreement and all references to this Agreement will include the exhibits, and any attachments thereto.

**“Amex”** means the American Stock Exchange, LLC.

**“Assets”** means any and all assets, properties and rights owned by a Participant, whether tangible or intangible, whether real, personal or mixed, whether fixed, contingent or variable.

**“Business Day”** means any Monday, Tuesday, Wednesday, Thursday or Friday on which Amex and Nasdaq are open for trading and on which banking institutions in the State of New York are not authorized or obligated by Law to close.

**“Confidential Information”** means any information received from a Participant, either orally or in writing (hard copy or electronic) prior to or after the Effective Date, relating to the business, affairs, operations or customers of such Participant including, but not limited to, information that relates or refers to: business planning; internal controls; computer, data processing, or communications architectures or systems; electronic data processing architectures, applications, programs, routines, or subroutines; business affairs and methods of operation or proposed methods of operation, techniques or systems of a Participant or any customer of a Participant or financial or

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other information. Notes, documents, summaries, analyses or reports which are prepared from Confidential Information to the extent such items specifically incorporate, refer to, or relate to Confidential Information are themselves deemed to be Confidential Information. Notwithstanding the foregoing, Confidential Information will not include information that the Participant receiving the information can demonstrate is or was: (i) revealed to such Participant on a non-confidential basis prior to its disclosure by the other Participant, (ii) publicly known other than by the breach of this Agreement or by breach of any other agreement or obligation between or among the Participants hereto and/or any of their respective Affiliates or Representatives relating to confidentiality, or (iii) lawfully acquired on a non-confidential basis or independently developed by a Participant who did not have access to any such Confidential Information, or on behalf of a Participant by Persons who did not have access to any such Confidential Information.

**“Contract”** means any contract, agreement, lease, license, sales order, purchase order, instrument or other commitment that is binding on any Person or any part of its property under applicable law.

**“Control”** means the possession, direct or indirect, of the power to direct or cause the direction of the management of the policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Domestic”** means the geographic areas including, but not limited to, dependencies, possessions, protectorates and territories over which the sovereignty of the United States extends.

**“ETF”** means an exchange traded fund. ETFs are actively traded on an exchange and are continually repriced to reflect the results of commercial transactions involving them. This is in contrast to mutual funds that are only priced once at the close of each Business Day. For purposes of this Agreement, ETF does not include QQQ.

**“Foreign”** means any geographic area including, but not limited to, any dependency, possession, protectorate or territory that is not under the sovereignty of the United States.

**“Governmental Entity”** means any government or political subdivision thereof, whether federal, state, local or foreign, any agency or instrumentality of or chartered by any such government or political subdivision, any court, commission, board, tribunal (including arbitration tribunal) or judicial authority thereof.

**“Hardware”** means the hardware listed on an Exhibit to the Technology Transition Agreement.

**“Indemnifying Participant”** means a Participant that is obligated to provide indemnification pursuant to Article 3 of this Agreement.

**“Indemnitee”** means a Person that is entitled to seek indemnification pursuant to Article 3 of this Agreement.

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**“Intellectual Property”** means any and all domestic and foreign patents and patent applications, together with any continuations, continuations-in-part or divisional applications thereof, and all patents issuing thereon (including reissues, renewals and re-examinations of the foregoing); invention disclosures; mask works; copyrights, and copyright applications and registrations; trademarks, service marks, service names, trade names, and trade dress, in each case together with any applications and registrations therefor and all appurtenant goodwill relating thereto; trade secrets, and all other intellectual property under the laws of any country throughout the world.

**“Interest”** means the prime commercial rate as announced from time to time by JPMorgan Chase & Co. at its principal office in the United States plus one percent per annum.

**“Law”** means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Governmental Entity.

**“Liabilities”** means any and all debts, liabilities, commitments and obligations, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, whenever or however arising (including, without limitation, whether

arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by generally accepted accounting principles to be reflected in financial statements or disclosed in the notes thereto.

“**Losses**” means any Liability, loss, damage, claim, charge, action, proceedings, deficiency, payments, interest, penalty, costs and expenses (including reasonable attorney’s fees).

“**Market Group**” means The Nasdaq-Amex Market Group, Inc., originally incorporated under the name NASD Market Holding Company.

“**Material Adverse Effect**” means a material adverse effect on the business, property, Assets, Liabilities, operations, condition (financial or otherwise) or prospects of a Participant and its Subsidiaries taken as a whole.

“**NASD**” means the National Association of Securities Dealers, Inc.

“**Nasdaq**” means The Nasdaq Stock Market, Inc.

“**Nasdaq FPS**” means Nasdaq Financial Products Services, Inc.

“**Nasdaq Technology**” means all the Software, Hardware, data or information, and/or services as set forth herein to be provided to Amex as set forth in the Technology Transition Agreement.

“**New Holdco**” means the New NASD Holding Company, Inc.

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“**Old Amex**” means the American Stock Exchange, Inc.

“**Participants**” means NASD, Nasdaq, Amex, Old Amex and Nasdaq FPS collectively.

“**Parties**” means, collectively, NASD, Nasdaq, and Amex.

“**Person**” means an individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated association, any other entity, or a government or any department or agency or other unit thereof.

“**QQQ**” which is otherwise known as the Nasdaq-100 Index Tracking Stock represents undivided ownership interests in the Nasdaq-100 Trust, Series 1. The Nasdaq-100 Trust, Series 1 is a unit investment trust designed to closely track the price and yield performance of the stocks of the companies that comprise the Nasdaq-100 Index. Nasdaq FPS is the sponsor of the Nasdaq-100 Trust and must exercise its fiduciary duties to the Nasdaq-100 Trust in its performance of this Agreement. The Nasdaq 100-Trust, Series 1 trades on the Amex under the symbol “QQQ” and has a minimum trading unit of 1 Share of Nasdaq-100 Index Tracking Stock.

“**Related Documentation**” means, with respect to the Software, Systems and Hardware and related tools and utilities that are provided to one Party by another Party pursuant to the Technology Transition Agreement, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information, to the extent it exists in the possession of the providing Party, and that the receiving Party reasonably requires for the purposes for which the Software, Systems and Hardware and related tools and utilities are provided.

“**Representatives**” means directors, officers, employees, agents, consultants, advisors, accountants, attorneys and other representatives.

“**SEC**” means the United States Securities and Exchange Commission.

“**Software**” means the set of programs (object code, and if so noted in the Technology Transition Agreement, source programs) and Related Documentation in whatever form or media, required to be provided under the provisions of the Technology Transition Agreement by one Party to another Party.

“**Standardized Options**” means, collectively, any options issued or cleared through The Options Clearing Corporation or its successor or standardized options in securities (including American Depositary Receipts or their equivalent) issued or cleared by another equivalent clearing corporation.

“**Stipulation of Settlement**” means the stipulation of settlement, dated November 24, 1998, and final order and judgment in Philipson v. American Stock

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Exchange, Inc., et al, United States District Court for the Southern District of New York, 98 Civ. 4219 (DC).

“**Subsidiary**” means with respect to any specified Person, any corporation or other legal entity of which such Person or any of its Subsidiaries Controls or owns, directly or indirectly, more than 50% of the stock or other equity interest entitled to vote on the election of the members to the board of directors or similar governing body.

“**Systems**” means the Software, Hardware and related tools, utilities and equipment, collectively, used by a Party to perform the Technology Transition Agreement.

“**Technology Agreement**” means that certain Technology Transfer and Development Agreement, dated as of October 30, 1998, among Amex, NASD, Market Group and Old Amex, including all exhibits and schedules thereto.

“**Technology Transition Agreement**” means that certain Technology Transition Agreement, dated as of the date hereof, among NASD, Nasdaq, and Amex, including all exhibits and schedules thereto.

“**Third-Party Claim**” means any claim, suit, arbitration, inquiry, proceeding or investigation by or before any court, governmental or other regulatory or administrative agency or commission or any arbitration tribunal asserted by a Person other than a Participant or its respective Affiliates which gives rise to a right of indemnification hereunder.

“**Transaction Agreement**” means that certain Transaction Agreement, dated as of May 8, 1998, among NASD, Market Group, Amex and Old Amex and each of its subsidiaries, including all exhibits and schedules thereto, as amended as of October 30, 1998, including all exhibits and schedules thereto, and as further amended by the Stipulation of Settlement.

“**Transaction Documents**” means collectively, (i) the Transaction Agreement, (ii) the Limited Liability Company Agreement of Amex, dated as of October 30, 1998, among Market Group, Old Amex and Amex, and (iii) the Technology Agreement.

“**Transferee**” means any Person that will receive a transfer of Assets pursuant to Article 2.

“**Transferor**” means any Person that will make a transfer of Assets pursuant to Article 2.

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**Section 1.02 Incorporation and References** In this Agreement and the Exhibits to this Agreement:

- (1) the Exhibits to this Agreement are hereby incorporated into and deemed part of this Agreement and all references to this Agreement or any other agreements will include the Exhibits, and any attachments thereto;
- (2) references to an Exhibit, Section or Article will be to such Exhibit to, or Section or Article of this Agreement, unless otherwise provided;
- (3) references to days will mean calendar days unless otherwise provided;
- (4) references to any Law will mean references to such Law in changed or supplemented form or to a newly adopted Law replacing a previous Law; and
- (5) references to and mention of the word “including” or the phrase “e.g.” will mean “including, without limitation.”

**Section 1.03 Headings.** The Article and Section headings, Table of Contents and Table of Exhibits are for reference and convenience only and will not be considered in the interpretation of this Agreement.

**Section 1.04 Interpretation of Documents.** Except as otherwise expressly set forth in the body of this Agreement or in any of the Exhibits, in the event of a conflict between the provisions in the body of this Agreement and an Exhibit that expressly relate to the subject of such conflict, the provisions of such Exhibit will prevail. The words “hereof,” “herein,” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

**Section 1.05** [Reserved]

**Section 1.06 Mutual Release and Discharge.** The Parties and Old Amex hereby acknowledge and agree that on and as of the Effective Date:

- (i) each of the NASD, Amex and Old Amex, for itself, its Subsidiaries, Affiliates, successors in interest and assigns, hereby unconditionally releases and forever discharges Nasdaq, its Subsidiaries, Affiliates, successors, assigns and employees, from all past, present and future claims, Losses, demands, actions and causes of action of any kind or nature, whether known or unknown (collectively, **Claims**), arising from or relating to the Transaction Documents and from all Claims arising from or related to any relationship of the Parties prior to the Effective Date;
- (ii) Nasdaq, for itself, its Subsidiaries, Affiliates, successors in interest and assigns, hereby unconditionally releases and forever discharges the NASD, Amex and Old Amex, their respective Subsidiaries, Affiliates, successors, assigns and employees, from all past, present and future Claims arising from or relating to the Transaction

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Documents and from all Claims arising from or related to any relationship of the Parties prior to the Effective Date; and

(iii) each of Amex and Old Amex for itself, its Subsidiaries, Affiliates, successors in interest and assigns, hereby unconditionally releases and forever discharges the NASD, its Subsidiaries, Affiliates, successors, assigns and employees, from any past, present and future Claims arising directly and solely from the provision of technologies and services by Nasdaq specified in the Technology Transition Agreement (excluding AmexOnline). Further, to the extent that performance by Nasdaq of the Technology Transition Agreement would fulfill the NASD’s or Market Group’s obligations under the Technology Agreement (the **Obligations**), each of Amex and Old Amex, for itself, its Subsidiaries, Affiliates, successors, in interest and assigns, hereby unconditionally releases and forever discharges the NASD, its Subsidiaries, Affiliates, successors, assigns and employees from any past, present, and future Claims arising directly and solely from the Obligations under the Technology Agreement. \*\*\*\*\*.

The Parties and Old Amex also hereby ratify NASD’s assumption, and its agreement to be bound by, to comply with and to timely pay, perform and/or discharge all Liabilities and obligations of Market Group under the Transaction Documents.

**ARTICLE 2**

**Transfer of Assets and Related Services**

**Section 2.01 Provision of Technology.** The provision of Nasdaq Technology among the Parties will be governed by the terms and conditions of the Technology Transition Agreement among the Parties, a copy of which is attached hereto as Exhibit D.

**Section 2.02 Transfer Documents.** Each Party hereto agrees to deliver to the other Parties hereto on a timely basis, without any additional consideration, such other documents, instruments, certificates and agreements as may be reasonably requested by any of such other Parties hereto in connection with the transactions contemplated hereby and to take such further action as may be reasonably necessary to carry out the provisions hereof, including without limitation, the delivery and execution of appropriate transfer instruments.

**Section 2.03 Trading Rights.**

**Section 2.03.1 Options.** \*\*\*\*

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\* \*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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**Section 2.03.2 ETFs.** Nasdaq agrees that, until \*\*\*\*, neither Nasdaq nor any of its Affiliates will list shares in any ETF that, as of the Effective Date : (i) is listed on the Amex; or (ii) Amex or its issuers have publicly announced will be listed on the Amex. Through \*\*\*\*, neither Nasdaq nor any of its Affiliates will, consistent with its contractual obligations existing on the Effective Date, discriminate against Amex in the licensing of trading rights to Domestic ETFs, and if Nasdaq or any of its Affiliates licenses Domestic trading rights to an ETF to a third party, Nasdaq or its applicable Affiliate will also make available to Amex a non-exclusive license to trade such ETF Domestically at a reasonable and usual commercial rate.

**Section 2.03.3 QQQ.** Nasdaq and the QQQ Trust shall grant to Amex, pursuant to the License Agreement attached hereto as Exhibit E, a license to continuously: (i) list exclusively and, on a non-exclusive basis, trade and market QQQ Domestically until \*\*\*\*; and (ii) list, trade and market, QQQ in each Foreign region until \*\*\*\*, on a non-exclusive basis beginning on \*\*\*\*, *provided, however*, that in Asia such license shall begin on \*\*\*\*. For purposes of Sections 2.03.3 and 2.03.4 herein, \*\*\*\*.

**Section 2.03.4 Annual Fees.** Beginning in calendar year 2002, Amex will pay an annual fee of up to \$5.5 million to Nasdaq for the right to list, trade and market QQQ. This fee will be calculated as follows:

**Section 2.03.4.1 Domestic.** This annual fee will include Amex's payment of \$4.5 million to Nasdaq for the right to list, trade and market QQQ Domestically. \*\*\*\*.

**Section 2.03.4.2 International.** In addition to the \$4.5 million Domestic annual fee, Amex will pay an additional annual fee of \$500K to Nasdaq for the right to trade QQQ in Foreign regions. Amex will begin paying this \$500K additional annual fee upon its registration of QQQ for listing on any market in a Foreign region. Although this annual fee will be paid quarterly by Amex on a prorated basis, Amex will adjust the amount of its payment in the last quarter of each year to ensure that it has paid the entire \$500K fee to Nasdaq on an annual basis. If Amex does not trade QQQ in any market in a foreign region, it will no longer be liable to Nasdaq for the payment of this fee, *provided, however*, that if Amex lists or trades QQQ in any market in a Foreign region for at least one day in any quarter, Amex will remain liable to pay the entire quarterly fee to Nasdaq for such listing. Amex may also be liable to Nasdaq for the payment of another \$500K annual fee, in addition to the \$500K annual fee payable when QQQ becomes registered to trade on any market in a Foreign region, for the right to trade QQQ internationally. Amex will be required to pay this second \$500K annual fee to Nasdaq, if, at the total annual fee of \$5 million for the right to trade QQQ

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\* \*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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Domestically and in any market in a Foreign region, Nasdaq is still able to certify that \*\*\*\*\*

**Section 2.03.5 Payment Procedures.** Nasdaq will invoice Amex quarterly for any fees that Amex owes Nasdaq for the right to list, trade or market ETFs and QQQ in accordance with the procedures set forth in Article 13 herein.

**Section 2.03.6 Reasonable Arrangements for Listing QQQ Internationally and Provisions for the Payment of Costs.** Amex shall pay all fees and expenses necessary to obtain the right to list QQQ in any Foreign region. In addition, Amex shall reimburse Nasdaq for all reasonable expenses incurred by Nasdaq in connection with such listing, including, but not limited to, Nasdaq's reasonable outside legal and other professional fees related to the filing by Nasdaq of all related applications and the obtaining by Nasdaq of all licenses, permits, consents and approvals required by applicable Governmental Entities. Nasdaq will use its best commercially reasonable efforts to facilitate the Amex's right to list QQQ in any Foreign region within a reasonable time frame. Amex will also be responsible for the payment of any incremental fees or expenses, including reasonable outside incremental legal and other professional fees, incurred by Nasdaq in addition to the normal fees and related expenses required to obtain permission to list QQQ in any Foreign region, if Nasdaq incurred such additional fees or expenses due to Amex's failure to provide reasonable advance notice to Nasdaq of Amex's intent to obtain the right to list QQQ in that region. If Amex reimburses Nasdaq for such costs, and then begins listing QQQ in such Foreign region, Amex will then have the exclusive right to list QQQ in that Foreign region for a period of \*\*\*\* from the date that Amex reimbursed Nasdaq for the costs that Nasdaq incurred in obtaining Amex's right to list QQQ in that region. If, however, Amex reimburses Nasdaq for such costs, and then refrains from listing or trading QQQ in such Foreign region, Amex will then have the exclusive right to list QQQ in that Foreign region for a period of \*\*\*\* from the date that Amex reimbursed Nasdaq for the costs that Nasdaq incurred in obtaining Amex's right to list QQQ in that Foreign region. Upon the expiration of this \*\*\*\* period, Nasdaq may then: (i) reimburse Amex for the fees and expenses paid by Amex to obtain the right to list QQQ in that Foreign region; and (ii) begin listing QQQ in that region. If

Nasdaq obtains the right to list QQQ in such Foreign region subsequent to any exclusivity period for Amex, then the parties will equally share the costs incurred by both parties for the right to list QQQ in that Foreign region.

**Section 2.04 Globe Logo.** NASD and Amex will assign all of their respective rights, interests, and all related goodwill in the Globe logo, and any and all works based upon, derived from, or incorporating the Globe logo, as well as all causes of actions, claims and demands or other rights for, or arising from any infringement, including past

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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infringement, of the Globe logo (the **Logo**) to Nasdaq at no cost to Nasdaq. A drawing of the Logo is attached hereto as Exhibit F. Nasdaq will have no obligation to: (i) reimburse NASD and Amex for any costs that NASD and Amex incurred in the development, use, and assignment of this Logo; or (ii) continue to allow NASD and Amex to use the Logo once this assignment has become effective. This assignment will become effective for public dissemination no later than December 31, 2001 and is made with no representations or warranties except that neither Amex nor NASD have previously granted any license to or ownership of the Logo to any other entity. Each of NASD and Amex will use all commercially reasonable efforts to: (i) stop its current use of the Logo; and (ii) prevent the continued or future use of the Logo in any of their respective materials after the effective date of its assignment, *provided, however*, that each of NASD and Amex individually agree that it will: (a) promptly notify Nasdaq of any current use of the Globe Logo that it will be unable to discontinue as of the effective date of this assignment; and (ii) undertake all commercially reasonable efforts to cease such use of the Logo as soon as possible. If: (i) Nasdaq becomes aware of any continuing use of the Logo by NASD or Amex; and (ii) NASD or Amex has failed to notify Nasdaq of such continuing use, then Nasdaq will notify NASD or Amex of such use and provide NASD or Amex with a reasonable opportunity to cure its infringing use of the Logo. The Parties further agree that all disputes arising from NASD's or Amex's failure or inability to terminate its use of the Logo as of the effective date of such assignment will first be referred to the Parties' Program Executives.

**Section 2.05 Advertising.** Nasdaq will include the American Stock Exchange corporate identity in all of Nasdaq's domestic internet, print and television advertising and collateral material for QQQ beginning on January 1, 2002; the American Stock Exchange corporate identity shall be featured prominently and all elements of the logotype should be clearly legible and in conformance with the guidelines for reproduction of the American Stock Exchange logo. The American Stock Exchange name will not appear in a manner that looks like, or is similar to, the appearance of NASD-required disclosure language in the advertisement, nor will the American Stock Exchange name be positioned in close proximity to the NASD-required disclosure language. In advance of finalization and publication, Nasdaq will review with Amex all advertisements in the mediums itemized above (with "Greek Text" or its substantive equivalent replacing any creative material that Nasdaq reasonably determines is inappropriate to share with Amex) that will use the Amex name, and will consult Amex on ideas or concerns that they may have about alternate ways to display the Amex name. Nasdaq will continue to reference the American Stock Exchange in its advertising for as long as Amex's license to trade QQQ remains in effect and Amex pays all licensing fees that are due in accordance with the provisions of Section 2.03.4 herein. Nasdaq further agrees that when referencing an Amex-listed ETF in its domestic print advertising, domestic direct marketing materials, or on its domestic websites it will indicate that the Amex is a trading venue for the particular ETF; unless, however, Nasdaq reasonably determines in good-faith that such information is irrelevant. Amex agrees that it will include a reference to Nasdaq, Nasdaq 100 or QQQ in all of Amex's Family Index Share advertising. In advance of finalization and publication, Amex will review with Nasdaq all such Family Index Share Advertising (with "Greek Text" or its substantive equivalent

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replacing any creative material that Amex reasonably determines is inappropriate to share with Nasdaq) that will use the Nasdaq name, and will consult Nasdaq on ideas or concerns that they may have about alternate ways to display the Nasdaq name.

**Section 2.06 Approvals.** Each Party agrees to obtain and maintain all necessary licenses, permits or government approvals as may be necessary for it to perform under this Agreement. Each Party further agrees to cooperate with and assist the other Parties in obtaining and maintaining any such approvals as applicable, to the extent reasonably possible, if: (i) requested to do so by another Party in writing and (ii) without limiting the requesting Party's obligations under this Agreement.

## ARTICLE 3

### Indemnification

**Section 3.01 Indemnification.** Each Participant agrees to indemnify and hold harmless the other Participants against all Losses that the other Participants may incur by reason of the breach by such Participant of any term, provision, covenant, warranty or representation contained herein, in connection with the performance of such Participant's obligations under this Agreement or the Technology Transition Agreement and/or any claim, demand, or legal action by a third party related to any of the foregoing. No Participant shall have any obligation to defend, indemnify or hold harmless any Indemnitee against claims, damages, Losses or expenses to the extent arising from (i) the use of Intellectual Property, Hardware, Software or Systems or information furnished to such Indemnitee in other than its intended manner or (ii) changes to such Intellectual Property, Hardware, Software or Systems or information by or on behalf of the Indemnitee by any entity other than the Participant (including, but not limited to, changes in the operating environment of such Hardware, Software, Systems or Information). Each Participant further agrees to indemnify and hold harmless the other Participants to this Agreement against any and all claims, damages, Losses and expenses (including reasonable attorneys' fees) arising from or in connection with any claim, demand or legal action by a third party, related directly to any Indemnitee's permitted use of any Intellectual Property, Hardware, Software or Systems or information furnished to such Indemnitee by the Indemnifying Participant pursuant to the provisions of this Agreement or the Technology Transition Agreement.

### **Section 3.02 Indemnification Procedures.**

**Section 3.02.1 Notice.** If any Indemnitee receives notice of the assertion of any Third-Party Claim with respect to which an Indemnifying Participant is obligated under this Agreement to provide indemnification, such Indemnitee shall give such Indemnifying Participant notice thereof (together with a copy of such Third-Party Claim, process or other legal pleading) promptly after becoming aware of such Third-Party Claim; *provided, however*, that

prejudiced by such failure to give such notice. Such notice shall describe such Third-Party Claim in reasonable detail.

**Section 3.02.2 Defense of Claims.** An Indemnifying Participant, at its own expense and through counsel chosen by it (which counsel shall be reasonably acceptable to the Indemnitees), may elect to defend any Third-Party Claim. If an Indemnifying Participant elects to defend a Third-Party Claim, then, within ten (10) Business Days after receiving notice of such Third-Party Claim (or sooner, if the nature of such Third Party claim so requires), the Indemnifying Participant shall notify the Indemnitees of its intent to do so, and the Indemnitees shall cooperate in the defense of such Third-Party Claim. The Indemnifying Participant shall pay each Indemnitee's reasonable out-of-pocket expenses incurred in connection with such cooperation. The Indemnifying Participant shall keep the Indemnitees reasonably informed as to the status of the defense of such Third Party Claim. After notice from an Indemnifying Participant to an Indemnitee of its election to assume the defense of a Third-Party Claim, such Indemnifying Participant shall not be liable to such Indemnitees under this Section 3.02 for any legal or other expenses subsequently incurred by such Indemnitees in connection with the defense thereof other than those expenses referred to in the preceding sentence; *provided, however*, that such Indemnitees shall have the right to employ one law firm as counsel, together with a separate local law firm in each applicable jurisdiction (***Separate Counsel***), to represent such Indemnitees in any action or group of related actions (which firm or firms shall be reasonably acceptable to the Indemnifying Participant) if, in such Indemnitees' reasonable judgment at any time, either a conflict of interest between such Indemnitees and the Indemnifying Participant exists in respect of such claim, or there may be defenses available to such Indemnitees which are different from or in addition to those available to the Indemnifying Participant and the representation of both parties by the same counsel would be inappropriate, and in that event: (i) the reasonable fees and expenses of such Separate Counsel shall be paid by the Indemnifying Participant (it being understood, *however*, that the Indemnifying Participant shall not be liable for the expenses of more than one Separate Counsel (excluding local counsel) with respect to any Third-Party Claim (even if against multiple Indemnitees)); and (ii) each of the Indemnifying Participant and the Indemnitees shall have the right to conduct its own defense in respect of such claim. If an Indemnifying Participant elects not to defend against a Third Party Claim, or fails to notify an Indemnitee of its election as provided in this Section 3.02 within the period of ten (10) Business Days described above, the Indemnitees may defend, compromise, and settle such Third Party Claim and shall be entitled to indemnification hereunder (to the extent permitted hereunder), *provided, however*, that no such Indemnitee may compromise or settle any such Third-Party Claim without the prior written consent of the Indemnifying Participant, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Indemnifying Participant shall not, without the prior written consent of the Indemnitees, (i) settle or compromise any Third-Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Indemnitees of a written release from all liability in respect of such Third-Party Claim or (ii) settle or compromise any Third-Party Claim in any manner that would be reasonably likely to have a Material Adverse Effect on the Indemnitees.

**Section 3.02.3 Third-Party Claims.** Except as otherwise noted in the Technology Transition Agreement, if any Participant fails to defend jointly any such Third-Party Claim, the other Participant or Participants shall solely defend such Third-Party Claim and the Participant or Participants failing to defend jointly shall use all commercially reasonable efforts to cooperate with the other Participant or Participants in its or their defense of such Third Party Claim; *provided, however*, that no Participant may compromise or settle any Third-Party Claim so as to affect any other Participant without the prior written consent of the other appropriate Participant or Participants, which consent shall not be unreasonably withheld, conditioned, or delayed. All costs and expenses of any Participant in connection with, and during the course of, the joint control of the defense of any such Third-Party Claim shall be initially paid by the Participant that incurs such costs and expenses. Such costs and expenses shall be reallocated and reimbursed in accordance with the respective indemnification obligations of the Participants at the conclusion of the defense of such Third-Party Claim.

**Section 3.03 Certain Limitations.**

**Section 3.03.1 Amount.** The amount of any indemnifiable Losses or other liability for which indemnification is provided under this Agreement shall be net of any amounts actually recovered by the Indemnitee from third parties (including, without limitation, amounts actually recovered under insurance policies) with respect to such indemnifiable losses or other liability. Any Indemnifying Participant hereunder shall be subrogated to the rights of the Indemnitee upon payment in full of the amount of the relevant indemnifiable loss. An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provision hereof, have any subrogation rights with respect thereto. If any Indemnitee recovers an amount from a third party in respect of an indemnifiable loss for which indemnification is provided in this Agreement after the full amount of such indemnifiable loss has been paid by an Indemnifying Participant or after an Indemnifying Participant has made a partial payment of such indemnifiable loss and the amount received from the third party exceeds the remaining unpaid balance of such indemnifiable loss, then the Indemnitee shall promptly remit to the Indemnifying Participant the excess (if any) of (a) the sum of the amount theretofore paid by such Indemnifying Participant in respect of such indemnifiable loss plus the amount received from the third party in respect thereof, less (b) the full amount of such indemnifiable loss or other liability.

**ARTICLE 4**

**Access to Information**

**Section 4.01 Restrictions on Disclosure of Information.**

**Section 4.01.1 Limitations and Exceptions.** Each of the Participants hereto (the ***Receiving Participant***) agrees that it shall not, and shall not permit any of its Affiliates or Representatives to, disclose any Confidential Information of another Participant (the ***Disclosing Participant***) to any Person, other than to such Affiliates or

Representatives on a need-to-know basis in connection with the purpose for which the Confidential Information was originally disclosed.

**Section 4.02 Legally Required Disclosure of Confidential Information.** If any of the Participants to this Agreement or any of their respective Affiliates or Representatives asserts that it intends to disclose Confidential Information that is required to be disclosed by Law or applicable process, or is necessary or advisable to be disclosed in order to comply with any applicable statute or governmental rule, regulation, order, directive, policy or stock exchange rule or request, any financial or accounting requirement or any governmental requests for additional information or documents thereunder, such Disclosing Participant shall promptly notify the Participant claiming to own the Confidential Information (the **Owning Participant**) and shall use all commercially reasonable efforts to cooperate with the Owning Participant so that the Owning Participant may seek a protective order or other appropriate remedy and/or waive compliance with this Section 4.02. All reasonable expenses incurred by the Disclosing Participant in seeking a protective order or other remedy shall be paid by the Participant that claims to own such information as such expenses are incurred by the Disclosing Participant or upon written demand thereof. If such protective order or other remedy is not obtained, or if the Owning Participant waives compliance with this Section 4.02, the Disclosing Participant or its Affiliate or Representative, as applicable, shall (a) disclose only that portion of the Confidential Information which its legal counsel advises is required, necessary, or advisable; (b) use all commercially reasonable efforts to obtain reliable assurance as requested by the Owning Participant that confidential treatment will be accorded such Confidential Information, and (c) promptly provide the Owning Participant with a copy of the Confidential Information so disclosed, in the same form and format so disclosed, together with a description of all Persons to whom such Confidential Information was disclosed.

**Section 4.03 Unauthorized Acts.** Without limiting the other Participant or Participants' rights in respect of a breach of this Article, the Participant receiving any Confidential Information will:

- (1) promptly notify the Disclosing Participant of any unauthorized possession, use or knowledge, or attempt thereof, of the Disclosing Participant's Confidential Information by any person or entity that may become known to Receiving Participant;
- (2) promptly furnish to the Disclosing Participant full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Disclosing Participant in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of the Disclosing Participant's Confidential Information;
- (3) cooperate with the Disclosing Participant (at the Disclosing Participant's expense) in any litigation and investigation against third parties deemed necessary by the Disclosing Participant to protect its proprietary rights (such cooperation will not require, nor shall be deemed to be, a violation of any legal privilege); and

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- (4) promptly use its commercially reasonable efforts (acknowledging that its previous efforts were inadequate) to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.

**Section 4.04 Return of Confidential Information.** Each Participant agrees that all Confidential Information, including any copies thereof, will be, at the preference of the Owning Participant, either returned to the owner of such Confidential Information or destroyed within ten (10) calendar days of the completion or termination of this Agreement. Notes and other documents referencing or relating to Confidential Information may be made and kept by the Participants, but will continue to be governed by the provisions of this Agreement until they are destroyed.

**Section 4.05 Standard of Care.** The Participants acknowledge the sensitive and secret nature of the Confidential Information they will have access to and agree that they will treat such Confidential Information as strictly confidential and will exercise the same degree of care in the protection of the Confidential Information as they each exercise with respect to their own proprietary property and trade secrets, but in no event less than a reasonable degree of care given the nature of the Confidential Information. Each Participant warrants and represents that, except as otherwise permitted by this Agreement, it has not disclosed any Confidential Information of the other Participants to this Agreement to any third party.

**Section 4.06 Intellectual Property.** All Intellectual Property rights associated with the Confidential Information, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights will remain in the Owning Participant, unless otherwise specified in the Technology Transition Agreement.

**Section 4.07 Costs.** Each Participant will bear any cost it incurs as a result of its compliance with this Article 4.

## ARTICLE 5

### Insurance Matters

**Section 5.01 Insurance.** During the term of this Agreement and during the period upon which any obligations under the Technology Transition Agreement remain outstanding and any additional period of time that assistance may be provided by the Parties following the termination of the Technology Transition Agreement or this Agreement, each Party will obtain, at its own expense, and keep in full force and effect professional liability insurance covering the errors and omissions of the Party committed in connection with the Technology Transition Agreement or this Agreement in an amount not less than \$\*\*\*\*\*. Each Party's insurance will be written by one or more acceptable

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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**Section 5.02. Insurance Documentation.** Each Party will furnish to the other Parties certificates of insurance evidencing the coverage referenced in Section 5.01 herein prior to the Effective Date. All certificates of insurance will include a provision whereby a minimum of thirty (30) days prior written notice must be received by the other Parties to this Agreement prior to coverage cancellation or material alteration of the coverage by either the Party to this Agreement that has purchased such coverage or the applicable insurer.

**Section 5.03 Risk of Loss.** Each Party will be responsible for personal injury, and the risk of loss of, or damage to, its property, unless such loss or damage was caused by the negligence or willful misconduct of another Party or Parties to this Agreement. All Parties waive their rights of subrogation for personal injury and property loss or damage against the other Parties.

## ARTICLE 6

### Term and Termination

**Section 6.01 Term.** The term of this Agreement will commence on the Effective Date and expire on the date upon which all of the Participants have fulfilled all of their obligations under the terms of this Agreement and any agreements attached hereto as exhibits.

**Section 6.02 Renewal.** The Participants may mutually agree to extend the term of any provision of this Agreement.

**Section 6.03 Financial Weakness.** Without limiting any provision of Law, if any Party's financial condition at any time does not, in the reasonable judgment of any other Party, justify continuance of this Agreement on the terms of payment set forth herein, the Party that is concerned will be entitled to request that the Party about which it is concerned provide it with adequate assurances of its ability to perform its obligations hereunder. Any dispute between or among the Parties under this Section shall be resolved under the dispute resolution procedures set forth in Article 12 herein.

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## ARTICLE 7

### Non-Indemnification Tax Issues

**Section 7.01 Generally.** The fees paid by the Parties for any Nasdaq Technology furnished in their performance of this Agreement or the Technology Transition Agreement will be inclusive of any applicable sales, use, gross receipts, excise, or other taxes attributable to periods on or after the Effective Date based upon or measured by the cost in providing such Nasdaq Technology. No Party, however, will be responsible for the payment of any tax assessed on the personal property or net income of the other Parties. To the extent that any sales, use, gross receipts, excise, value-added or services tax is required by Law to be separately identified in billings, the Party issuing the invoice will separately identify such tax.

**Section 7.02 Tax Losses.** The Parties agree and acknowledge that: (i) Nasdaq will be entitled to realize \$\*\*\*\*\* of tax loss carry forwards related to the assignment by Market Group of its interest in Amex to New NASD Holding, Inc.; (ii) Nasdaq has paid the NASD \$\*\*\*\* for Nasdaq's use of \$\*\*\*\* of losses allocated by Amex to Market Group for the period beginning \*\*\*\* and ending on \*\*\*\*; and (iii) the NASD is required to repay Nasdaq the \$\*\*\*\* in cash that Nasdaq paid to the NASD. To the extent that any of the losses described in clause (i) are (or become) unavailable for use by Nasdaq in the year allocated to Market Group, the NASD shall compensate Nasdaq for the amount of: (a) the losses that are or have become unavailable; and (b) any penalties, interest or similar amounts assessed by any Governmental Entity in connection with any assessment arising from or relating to the unavailability of such losses by transferring an equivalent amount of cash to Nasdaq.

## ARTICLE 8

### Force Majeure

No Participant will be liable for delay or failure in performance of any of the acts required by this Agreement to the extent this delay or failure arises from circumstances beyond its reasonable control (including, without limitation, acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity, supplier delays, communications or power failure, equipment or software malfunction, or labor disputes). The Participants prevented from performing their obligations under this Agreement by such force majeure event will be excused from such performance for as long as such: (i) force majeure event continues; and (ii) such Participants continue to use their commercially reasonable best efforts to recommence performance of their obligations under this Agreement whenever and to whatever extent possible without delay, including through the use of alternate sources, workarounds or other means. If the period of non-performance exceeds thirty (30) calendar days, then the Participants to whom the performance is due will each have the right to terminate the

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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provisions of this Agreement affected by such non-performance as to the Participants owing performance upon fifteen (15) calendar days prior written notice.

## ARTICLE 9

### Ownership

**Section 9.01 Documentation.** Each Party will own all reports, summaries, or other documentation that another Party or Parties exclusively creates for it during their performance of this Agreement. The Parties may each, however, allow their agents or subcontractors to retain copies of such documentation if such documentation is required in order for such agents or subcontractors to discharge their duties under the terms of this Agreement. The

Parties will not be required to reveal their own confidential or proprietary information during their performance of this Agreement unless such information is a material component of the Nasdaq Technology provided. The Parties providing such documentation agree to execute any documents and make such further assurances as are reasonably necessary to confirm such ownership by the Party that is provided with such documentation.

**Section 9.02 Trademarks.** Except as otherwise set forth herein, each Party will retain all right, title and interest in and to its trademarks and service marks, registered or unregistered, (collectively, the **Marks**). Any specific use by one Party of another Party's Marks will only occur after consultation with, and the written approval of, the owner of the Marks.

## ARTICLE 10

### Audits

Each Party and the QQQ Trust will have the right to cause an independent third party, during normal business hours, and with reasonable advance notice, to review, copy and perform financial audits of the other Parties' business and financial records to verify any amounts previously invoiced or reported. In the event that such audits reveal that amounts invoiced or reported differ by five percent (5%) or more from the correct amount that should have been invoiced or reported, the Party having submitted incorrect invoices or reports will reimburse the auditing Party or the QQQ Trust (as applicable) for the reasonable cost of such review and audit and will refund the amount of any overpayment or remit the amount of any underpayment, if any. Each Party will, upon request, provide the other Parties and the QQQ Trust with copies of any internal audit reports that the auditing entity produces, or a third party retained by it produces, on any subject that is related to the Parties' performance of this Agreement, at no cost to the other Parties.

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## ARTICLE 11

### Representations and Warranties

**Section 11.01 General Representations and Warranties.** Each Participant hereby represents and warrants to each of the other Participants that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the State where it is domiciled;
- (b) as applicable, it has all requisite corporate, limited liability company, or other power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Participant: (i) has been duly authorized by the Participant; and (ii) will not conflict with, result in a breach of or constitute a default under any other agreement to which such Participant is a party to or by which the Participant is bound;
- (d) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its Assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse impact on the Participant's ability to fulfill its obligations under this Agreement;
- (e) it is, to the best of its knowledge, in compliance in all material respects with all applicable Laws, the violation of which would have a material impact on its or any other Participant's ability to fulfill its obligations under this Agreement, and has obtained all applicable permits and licenses required of it in connection with its obligations under this Agreement;
- (f) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a Material Adverse Effect on the other Participants' ability to fulfill their respective obligations under this Agreement;
- (g) it has the right, free and clear of any liens or encumbrances to grant the rights and deliver any technology or services to another Party and perform its obligations under this Agreement. Further, it warrants and represents that none of the technology it provides to any other Party will violate any patent, copyright, trade secret, trademark, trade dress, or other intellectual property right of any third party.
- (h) it will at all times exercise due care, prudence and diligence in carrying out its duties and responsibilities under this Agreement.

**Section 11.02 Specific Warranties.** Old Amex hereby represents and warrants that, as of the Effective Date hereof, its Subsidiaries that existed as of the effective date of the Transaction Documents have all been either dissolved or have become Subsidiaries

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of Amex. Nasdaq hereby warrants and represents that it has the right, through its wholly owned subsidiary Nasdaq FPS, to permit the listing, trading and marketing of QQQ on an exchange in a manner that is consistent with the fiduciary obligations of Nasdaq FPS to the beneficial owners of the QQQ products.

## ARTICLE 12

### Dispute Resolution

**Section 12.01 Dispute Resolution.** Any and all disputes, controversies or claims arising out of, relating to, or in connection with, this Agreement, including any question regarding its existence, validity, breach, scope or termination, including, but not limited to, any claims arising in tort (**Dispute**), but specifically excluding any Third-Party Claim for which the Participants may be obligated to indemnify each other pursuant to Article 3 hereof, will be settled in accordance with the procedures set forth in this Article 12. The Participants will first try to settle any Dispute among themselves. The Participants will start this process by referring any Dispute to their Program Executives (as hereinafter defined). The Participants' Program Executives will meet within five

(5) Business Days of the receipt by a Participant of written notification of the existence of such Dispute. If the Program Executives fail to timely meet or are unable to resolve the Dispute after having made a good faith effort to do so, or if more than five (5) days have elapsed after the Program Executives' initial meeting to discuss such Dispute, then on the request of any Participant: (i) if the Dispute involves the Parties' performance under the Technology Transition Agreement it will be referred to the Special Technology Consultant pursuant to the provisions of Section 12.03 herein; or (ii) if any Party to a Dispute involving the Parties' performance under the Technology Transition Agreement shall determine in its good faith business judgment, that the Dispute has a "special and significant economic impact," the Dispute shall be referred immediately to "fast track" binding arbitration pursuant to the provisions of Section 12.04 herein. All other Disputes among the Participants shall, on the request of any Participant, be referred first to non-binding mediation pursuant to the provisions of Section 12.02 herein. Except as to any dispute concerning a Third-Party Claim which has been brought against one or more of the Participants in a court of competent jurisdiction and which is subject to indemnification under Article 3 herein, the Participants agree that the dispute resolution procedures set forth in this Article 12 will be the exclusive method of resolving any Dispute.

**Section 12.02 *Non-Binding Mediation.*** Except as set forth in Section 12.01 herein, the Participants will submit all Disputes to non-binding mediation. The Participants involved, *however*, shall have the right to submit any Dispute that has been identified as one that the Participants want to resolve in an expedited manner directly to "fast-track" binding arbitration without first attempting to mediate such Dispute. The Participants will start the mediation process by filing a Request for Mediation with the American Arbitration Association (AAA). The Request for Mediation must include a brief description of the nature of the Dispute. The appropriate administrative fee must also be submitted to AAA with the Request for Mediation. AAA will then select a mediator that has experience in the subject matter of the Dispute from its roster of

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available mediators within ten (10) days and will provide a biographical sketch of the mediator to the Participants. If the mediator is not reasonably acceptable to all Participants involved in such Dispute, any Participant involved in the Dispute may request that the AAA replace the mediator with another mediator from the AAA's roster. The mediator will then meet with the Participants to resolve the Dispute on the first mutually available date. The mediation will be conducted in accordance with the Commercial Mediation Rules of the AAA. The Participants may agree in writing upon a time limit for the resolution of the Dispute through mediation, but absent such agreement the mediation shall continue for no more than thirty (30) days from the appointment of the mediator. If the Participants reach an agreement through mediation, they will put the terms of their agreement in writing and execute and exchange releases of claims. If: (i) the mediator is unable to resolve the Dispute within the time limit agreed upon in writing by the Participants; or (ii) any Participant to the mediation is dissatisfied with the results of such mediation, then any Participant to the Dispute may demand that the Dispute be referred to "fast track" binding arbitration pursuant to the procedures set forth in Section 12.04 herein. The Participants will share equally in the cost of any mediation initiated pursuant to this Section 12.02.

**Section 12.03 *Special Technology Consultant.*** The Parties will mutually agree upon a special technology consultant (***Special Technology Consultant***) who has significant personal experience and knowledge of the securities industry and the technical systems that are used by companies in such industry. Any individual selected by the Parties to act as the Special Technology Consultant will immediately disclose any conflict of interest that could have an impact upon his judgment in fulfilling his responsibilities as the Special Technology Consultant. Each Party agrees that it will not retain the individual that is serving as the Special Technology Consultant to perform other services, while serving as the Special Technology Consultant, without the prior written approval of the other Parties. The Special Technology Consultant will be solely responsible for: (i) monitoring the Parties' performance under the Technology Transition Agreement; and (ii) resolving all Disputes, by the informal or formal procedures set forth in this Section 12.03, relating to the provision of Nasdaq Technology, except those Disputes that have been identified, in its good faith business judgment, by a Party to this Agreement as having a "special and significant economic impact."

**Section 12.03.1 *Procedures.*** The Special Technology Consultant may informally resolve any issue or Dispute relating to Nasdaq Technology with the concurrence of the Parties. The Special Technology Consultant may also formally resolve any Dispute relating to Nasdaq Technology by conducting an arbitration in accordance with such rules as the Special Technology Consultant determines to be applicable. The arbitration of a technology-related Dispute will be commenced by the simultaneous submission of a statement of claim to the Special Technology Consultant and the opposing Party or Parties at the addresses specified in Section 14.03 herein. The opposing Party or Parties will then have such period of time as the Special Technology Consultant permits to submit a statement of defense. Within five (5) days of receiving the submission of a statement of claim, any of the opposing Parties may serve a notice on the Special Technology Consultant and the other Parties that it considers the Dispute to have

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a "special and significant economic impact," in which case the Dispute shall be resolved under Section 12.04 below. If a Party fails to file a statement of defense within the time limit set forth by the Special Technology Consultant, the Special Technology Consultant may proceed with the arbitration.

**Section 12.03.2 *Powers.*** Unless the Parties at any time agree otherwise, the Special Technology Consultant shall have the power upon the application of any Party or his or her own motion, but in either case only after giving the Parties a reasonable opportunity to state their views, to: (i) take whatever interim or final measures he or she deems necessary, including temporary or permanent injunctive relief and measures for the preservation, protection, conservation, disposal or termination, of any property, license, or things under the control of any Party including the payment and apportionment of damages; (ii) order any Party to produce to the Special Technology Consultant and to the other Parties for inspection, and to supply copies of, any documents or classes of documents in their possession, custody or power which the Special Technology Consultant deems to be relevant; (iii) conduct evidentiary hearings; (iv) conduct any other such inquiries as may, to the Special Technology Consultant, be necessary or expedient; or (v) extend or abbreviate any time limits provided in this section or otherwise agreed upon by the Parties. Any measure, order, or award made by the Special Technology Consultant shall adhere to the terms of this Agreement and the substantive Law of the State of New York. The Special Technology Consultant may award damages in any amount that the Special Technology Consultant determines to be reasonable, including up to three (3) times the amount of damages actually incurred by the Parties that were adversely impacted by another Party's failure to act in good faith. The arbitration conducted by the Special Technology Consultant shall be final, conclusive and binding upon the Parties, their successors and assigns. Any arbitration award shall be enforceable against a Party and judgment may be entered thereon in any court of competent jurisdiction. If the Dispute has been designated as having a "special and significant economic impact" and the Special Technology Consultant determines that any Party's delay in the implementation of the provisions of the Technology Transition Agreement is reasonable or unreasonable, he or she may so opine on the Party's acts or omissions in dispute and inform the arbitrators that are attempting to resolve any Dispute arising from or related to such delay of his or her opinion. This notification will set forth the Special Technology Consultant's justification for determining that such delay was reasonable or unreasonable.

Section 12.03.3 Replacement of Special Technology Consultant. The initial Special Technology Consultant shall be \*\*\*\*\*. The Special Technology Consultant may resign at any time by so notifying the Parties in writing, such resignation to be effective upon appointment of a successor Special Technology Consultant. The

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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Parties may also remove the Special Technology Consultant at any time by so notifying the Special Technology Consultant in a writing signed by all Parties and may appoint a successor by unanimous written consent. If the Special Technology Consultant resigns or is removed, or if a vacancy exists for any reason, the Parties will promptly agree upon the successor Special Technology Consultant, but failing such agreement by the Parties, the successor shall be designated by the AAA upon the request of any Party to this Agreement. Any Special Technology Consultant appointed by the AAA shall have significant personal experience and knowledge of the securities industry and the technical systems that are used by companies in such industry.

**Section 12.04 Arbitration Procedures.** Except as provided in Section 12.03, and except for any Third Party Claim brought in a court of competent jurisdiction by a Third Party for which the Participants may be obligated to indemnify each other pursuant to Article 3 herein, any Dispute not resolved in accordance with Sections 12.01 and 12.02, shall be finally settled by arbitration in accordance with this Section 12.04. Any arbitration shall be (i) final, conclusive and binding upon the Participants, their successors and assigns, (ii) conducted in New York, New York by three (3) impartial arbitrators acting by majority vote in accordance with the Commercial Arbitration Rules of the AAA (**Rules**); and (iii) any measure taken, order, or award issued therein shall adhere to the terms of this Agreement and the substantive Law of the State of New York. If the Participants are unable to resolve any Dispute (other than a Dispute concerning a Third-Party Claim) through the procedures set forth in Section 12.01, 12.02 or 12.03 herein, a Participant hereto may commence proceedings hereunder by delivering a written notice from its Program Executive or such Executive's designee (the **Demand**) to the other Participants providing a reasonable description of the Dispute. The Participant initiating the arbitration will forward two (2) copies of the Demand and this Article 12 to the AAA together with the appropriate filing fee. The AAA will promptly send the Participants a list of suitable arbitrators, who have been admitted to practice for at least fifteen (15) years and who are experienced in the arbitration of large, complex commercial disputes, that the AAA has chosen from its National Panel of Commercial Arbitrators upon its receipt of the Demand. The Participants will then select two (2) impartial arbitrators that are reasonably acceptable to them from the list provided to them by the AAA within five (5) days of their receipt of such list. The two arbitrators selected by the Participants will then select a third arbitrator from the AAA's roster that will serve as the chairperson of the arbitration panel (**Panel**) within five (5) days of their having been selected by the Participants. If the Participants are unable to agree upon the selection of arbitrators within such five (5) day period, they will so notify the AAA and the AAA will then promptly select two (2) arbitrators from its National Panel of Commercial Arbitrators. The two (2) arbitrators selected by the AAA will then appoint the third arbitrator from the AAA's National Panel of Commercial Arbitrators. The third arbitrator will serve as the chairperson of the Panel. If an arbitrator so selected becomes unable to serve, his or her successors shall be similarly selected or appointed. Each Participant shall provide to the other Participants to the Dispute, reasonably in advance of any hearing, copies of all documents which a Participant intends to present in such hearing and each Participant shall be allowed to conduct reasonable discovery through written requests for information, document requests, requests for stipulation of fact and

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depositions. The nature and extent of such discovery shall be determined by the Participants; *provided that*, if the Participants cannot agree on the terms of such discovery, the nature and extent thereof shall be determined by the Panel which shall take into account the needs of the Participants and the desirability of making discovery expeditious and cost effective. The Participants further acknowledge and agree that discovery relating to any Dispute that has been submitted for "fast track" arbitration must be completed and the presentation of the Dispute to the Panel must commence no later than thirty (30) days after the appointment of the Panel unless such time period has been extended by the mutual agreement of all of the Participants to this Agreement. The Participants further agree that the Panel must issue its decision on any Dispute that has been submitted for "fast track" arbitration within sixty (60) days of the appointment of the Panel unless all of the Participants to this Agreement agree in writing to extend such deadline for good cause shown. Any award by the Panel must be in writing and shall specify the factual and legal basis for the award. The Participants hereby agree that monetary damages may be inadequate and in addition to the award of damages the arbitrators may provide whatever interim or final measures they deem necessary, including permanent injunctive relief, which may encompass an award of specific performance, and/or other measures for the preservation, protection, conservation or disposal or termination of any property, license or things under the control of any Party, including the payment and apportionment of damages. The arbitrators may award damages in any amount that they determine to be reasonable. The arbitrators may also award damages up to three (3) times the amount of damages actually incurred by any Party that was adversely impacted by another Party's failure to act in good faith. The Panel shall apportion all costs and expenses of arbitration, including the Panel's fees and expenses and fees and expenses of experts, between the prevailing and non-prevailing Participants as the Panel in its sole discretion deems fair and reasonable. Any arbitration award shall be binding and enforceable against the Participants hereto and judgment may be entered thereon in any court of competent jurisdiction.

**Section 12.05 Damages.** Except as with respect to the provisions set forth in: Sections 12.03.2 and 12.04 herein that allow the award of up to three times the amount of damages actually incurred due to a Party's failure act in good faith, in no event may the Panel or the Special Technology Consultant award consequential, special, exemplary or punitive damages. The Panel or the Special Technology Consultant may, *however*, award consequential damages against any Participant that violates the provisions of Article 4 herein relating to the protection of Confidential Information.

**Section 12.06 Continuity of Services.** Each Party acknowledges that the timely and complete performance of its respective obligations pursuant to this Agreement is critical to the business and operations of the other Parties. Accordingly, in the event of a Dispute between any of the Parties, that arises from or is related to the Parties' performance of this Agreement, the Parties agree that, absent the award of interim relief by the Special Technology Consultant under Section 12.03.2 or the arbitration Panel under Section 12.04 herein, during the resolution of the Dispute: (i) they will not interrupt the provision of any technology or services; and (ii) all of the Parties will continue to so perform their other respective obligations under this Agreement in good faith.

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## ARTICLE 13

### Financial Procedures

**Section 13.01 Payment Procedures.** Amex will provide Nasdaq with monthly reports \*\*\*\*\*. Nasdaq will review these reports and then invoice Amex quarterly for fees due from Amex for its right to list, trade and market QQQ and ETFs pursuant to the provisions of Article 2 herein. Any additional costs or expenses incurred by the Parties in fulfilling their obligations under this Agreement may be allocated among the Parties as they may mutually agree upon. The format of all reports and invoices will be mutually agreed upon by the Parties. Each Party will: (i) review each report or invoice upon its receipt of such document in order to verify that it contains the correct information and is in the format agreed upon by the Parties; and (ii) pay all invoices not then in dispute within thirty (30) days of its receipt of such invoice. If any Party disputes the amount of any invoice or the accuracy of any report, it will notify the Party that sent such document of its disagreement within five (5) Business Days of its receipt of such document. The Parties' Program Executives will then meet in an attempt to resolve such discrepancies. If the Parties' Program Executives are unable to resolve any such disagreement within five (5) Business Days of being notified of the Dispute, then the Party that received the document will pay all amounts not then in dispute. The Parties will then resolve any remaining disagreements through the procedures set forth in Article 12 herein. None of the Parties will have a right of set-off for amounts due or alleged to be due under the terms of this Agreement. All invoices may be paid by electronic funds transfer.

**Section 13.02 Overdue Invoices.** Each Party may charge the other Parties Interest on any undisputed invoices that the other Parties failed to pay within forty-five (45) days of their receipt of such invoice. This Interest may be assessed monthly.

## ARTICLE 14

### Miscellaneous

**Section 14.01 Entire Agreement.** This Agreement and the exhibits to this Agreement, the Technology Transition Agreement, the drawing of the Globe logo, and the License Agreement constitute the entire agreement among the Participants with respect to the subject matter hereof and supersede all prior written and oral and all contemporaneous written and oral agreements and understandings with respect to the subject matter hereof.

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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**Section 14.02 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York regardless of the laws that might otherwise govern under principles of conflicts of laws applicable thereto.

**Section 14.03 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, by express or overnight mail delivered by a nationally recognized air courier (with delivery charges prepaid and a signed receipt confirming delivery is obtainable) or by certified mail (postage prepaid, return receipt requested) to the respective Participants or their successors or designees as follows:

(a) if to Amex:

American Stock Exchange, LLC  
86 Trinity Place  
New York, New York 10006  
Attn: \*\*\*\*\* - Senior Vice President

**With, in the case of notice of breach or default, a required copy to:**  
**American Stock Exchange, LLC**  
**86 Trinity Place**  
**New York, New York 10006**  
**Attn: \*\*\*\*\* - Associate General Counsel**

(b) if to NASD:

National Association of Securities Dealers, Inc.  
1735 K Street, N.W.  
Washington, D.C. 20006  
Attn: \*\*\*\*\* - Chief Administrative Officer

**With, in the case of notice of breach or default, a required copy to:**  
**National Association of Securities Dealers, Inc.**  
**1735 K Street, N.W.**  
**Washington, D.C. 20006**  
**Attn: Office of General Counsel - Contracts Group**

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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(c) If to Nasdaq:

The Nasdaq Stock Market, Inc.  
One Liberty Plaza  
165 Broadway  
New York, New York 10006  
Attn: \*\*\*\*\*- President

**With, in the case of notice of breach or default, a required copy to:  
The Nasdaq Stock Market, Inc.  
1735 K Street, N.W.  
Washington, D.C. 20006  
Attn: Office of General Counsel - Contracts Group**

(d) If to Old Amex:

American Stock Exchange, Inc.  
86 Trinity Place  
New York, New York 10006  
Attn: \*\*\*\*\* - Corporate Secretary

**With, in the case of notice of breach or default, a required copy to:  
American Stock Exchange, Inc.  
86 Trinity Place  
New York, New York 10006  
Attn: \*\*\*\*\* - Associate General Counsel**

(e) If to Nasdaq FPS:

Nasdaq Financial Products Services, Inc.  
1735 K Street, N.W.  
Washington, DC 20006  
Attn: \*\*\*\*\*

**With, in the case of notice of breach or default, a required copy to:  
The Nasdaq Stock Market, Inc.  
1735 K Street, N.W.  
Washington, D.C. 20006  
Attn: Office of General Counsel - Contracts Group**

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\*\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

or to such other address as the Participant to whom notice is given may have previously furnished to the others in writing in the manner set forth above. Any notice or communication delivered in person shall be deemed effective on delivery. Any notice or communication sent by air courier shall be deemed effective on the first business day at the place at which such notice or communication is actually received following the day on which such notice or communication was sent.

**Section 14.04 Program Executives.** Each Participant will also appoint a senior manager (**Program Executive**) who will serve as the primary representative of that Participant under this Agreement. Each Participant may, in its sole discretion, change its Program Executive at any time upon notice to the other Participants. Each Program Executive will: (i) have overall responsibility for managing and coordinating the daily performance of his or her Participant's obligations under this Agreement; and (ii) be authorized to act for and on behalf of his or her Participant with respect to all matters relating to this Agreement including any amendment thereof. Notwithstanding the foregoing, a Program Executive may, upon notice to the other Participants, delegate such of his or her responsibilities to such other employees of his or her Participant as the Program Executive deems appropriate.

**Section 14.05 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each Participant hereto, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement, except for Article 3 (which is intended to be for the benefit of the Persons provided for therein and may be enforced by such Persons).

**Section 14.06 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

**Section 14.07 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Participants hereto and their respective legal representatives and successors or assigns. The Exhibits attached hereto are an integral part of this Agreement and are incorporated into this Agreement and made a part hereof.

**Section 14.08 Assignment.** No Participant may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Participants, which consent will not be unreasonably withheld, conditioned or delayed, *provided, however*, that any Participant may assign this Agreement to a corporation controlling, controlled by or under common Control with the assigning Participant without releasing the assignor from its

obligations under this Agreement. The consent of a Participant to any assignment of this Agreement will not constitute such Participant's consent to further assignment. This Agreement will be binding on the Participants and their respective successors and permitted assigns. Any assignment in contravention of this subsection will be void.

**Section 14.09 Change of Control.** At least ninety (90) days prior to the effective date thereof or such fewer number of days as is reasonably practicable, Amex will notify NASD and Nasdaq of any: (i) sale of substantially all of the Assets of Amex, (ii) Person, other than NASD, acquiring more than fifty percent (50%) of the voting securities of Amex, (iii) merger involving Amex; or (iv) substantially similar transaction.

**Section 14.10 Independent Contractor.** Each Party and its Representatives, in performing this Agreement, are acting as independent contractors and not as employees or agents of the other Parties. Each Party will provide all insurance coverage required by applicable laws, regulations, or employment agreements, including, without limitation, medical and worker's compensation. Each Party further represents and warrants that none of the other Parties nor any individual employed by or associated with such Party shall be considered an employee of the other Parties to this Agreement for any purpose whatsoever. Each Party will be responsible for payment of all unemployment, social security, and other payroll taxes and all benefits of all of its individuals who are engaged in the performance of this Agreement. If, at any time, any liability is asserted against any Party for unemployment, social security or any other payroll tax related to another Party or any individuals or subcontractors employed by or associated with another Party, then such Party will indemnify and hold harmless the Party that liability is asserted against from any such liability, including, without limitation, any such taxes, any interest or penalties related thereto, and reasonable attorney's fees and costs.

**Section 14.11 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Participant. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Participants hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Participants as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 14.12 Survival Of Provisions.** The terms of this Agreement apply to those rights that survive any cancellation, termination, or rescission, namely—Release of Claims (Section 1.06), Access to Information (Article 4), Ownership (Article 9), and any warranties. Payment obligations of one Party to the other arising prior to the cancellation, termination or recession of this Agreement will survive the expiration of termination of this Agreement.

**Section 14.13 Failure or Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of any Participant hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 14.14 Amendment.** No change or amendment will be made to this Agreement or with respect to specific provisions of this Agreement except by an instrument in writing signed by each of the Participants affected by such change or amendment.

**Section 14.15 Covenant of Further Assurances.** The Participants covenant and agree that, subsequent to the execution and delivery of this Agreement and, without any additional consideration, each Participant will execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

**Section 14.16 Export.** Each Party agrees that it will comply with all applicable export laws and regulations of the United States. Each Party will cooperate with the other Parties in connection the requirements of this Article 14, including promptly furnishing any end-user certificates, affidavits regarding re-export or other applicable certificates or documents.

**Section 14.17 Publicity.** Except as otherwise set forth in this Agreement, each Participant will: (i) submit to the other Participants all advertising, written sales promotions, press releases and other publicity matters in which the other Participants' names or Mark(s) is/are mentioned or which contains language from which the connection of said name or Marks may be inferred or implied (in each instance, including the Marks), and (ii) not publish or use such advertising, sales promotions, press releases or publicity matters without the other Participants' prior written consent.

**Section 14.18 Authorization.** This Agreement will not be binding upon the Participants unless executed by an authorized officer of each Participant. Amex, Nasdaq and NASD, Old Amex and the Nasdaq FPS and the persons executing this Agreement represent that each such persons are duly authorized by all necessary and appropriate corporate or other action to execute this Agreement on behalf of their respective Participants.

**IN WITNESS WHEREOF,** each of the Participants has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized on the day and year first above written.

American Stock Exchange, LLC  
(Amex)

National Association of Securities  
Dealers, Inc. (NASD)

By: /s/ Salvatore F. Sodano

By: /s/ Robert R. Glauber

Name: Salvatore F. Sodano

Name: Robert R. Glauber

Title: Chairman and CEO

Title: Chairman and Chief Executive  
Officer

The Nasdaq Stock Market, Inc. (*Nasdaq*)

By: /s/ Richard G. Ketchum

Name: Richard G. Ketchum

Title: President

American Stock Exchange  
Membership Corporation (*Old Amex*)

By: /s/ Anthony J. Boglioli

Name: Anthony J. Boglioli

Title: Director

American Stock Exchange  
Membership Corporation (*Old Amex*)

By: /s/ Edwin S. Crooks

Name: Edwin S. Crooks

Title: Chairman

Nasdaq Financial Products Services, Inc. (*Nasdaq FPS*)

By: /s/ John L. Jacobs

Name: John L. Jacobs

Title: Chief Executive Officer

American Stock Exchange  
Membership Corporation (*Old Amex*)

By:

/s/ Robert  
M.  
Gordon

Name: Robert M. Gordon

Title: Director

American Stock Exchange  
Membership Corporation (*Old Amex*)

By: /s/ John T. McGowan

Name: John T. McGowan

Title: Director

## TECHNOLOGY TRANSITION AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the 6th day of February, 2002 (the "Agreement Date"), is entered into by and among (i) The Nasdaq Stock Market, Inc. ("Nasdaq") a Delaware corporation, (ii) the National Association of Securities Dealers, Inc., ("NASD"), a Delaware corporation, and (iii) The American Stock Exchange LLC ("Amex"), a Delaware limited liability company (Nasdaq, Amex and NASD are collectively referred to herein as the "Parties"). This Agreement constitutes Exhibit C to the Master Agreement of the same date among the National Association of Securities Dealers, Inc., The Nasdaq Stock Market, Inc., the American Stock Exchange, Inc., Nasdaq Financial Products Services, Inc. and the American Stock Exchange, LLC (the "Master Agreement"). Unless otherwise defined herein, all capitalized terms used herein shall have the meanings set forth in Article 1 of the Master Agreement and **Section 15** of this Agreement.

**WHEREAS**, in 1998, pursuant to the Transaction Documents, among other things, (i) Amex acquired substantially all the assets of and assumed the liabilities of Old Amex in consideration for a Class A membership interest in Amex, and (ii) the NASD and NASD Market Holding Company (later known as the Nasdaq-Amex Market Group, Inc. ("Market Group")) made commitments to Amex, including, without limitation, subject to certain conditions, that specific technology and related services would be provided to Amex;

**WHEREAS**, the NASD and Nasdaq, formerly a wholly-owned Subsidiary of the NASD, have taken corporate actions to restructure and recapitalize Nasdaq through: (i) a two phase private placement with the first phase closing on June 28, 2000 and the second phase closing on January 18, 2001; and (ii) the sale and issuance of \$240 million convertible subordinated debentures of Nasdaq to Hellman & Friedman Capital Partners IV, L.P. and certain of its affiliated limited partnerships, the proceeds from which were used to repurchase shares of Nasdaq common stock owned by the NASD; and Nasdaq is no longer a wholly-owned Subsidiary of the NASD;

**WHEREAS**, NASD, Nasdaq and Amex now intend to provide for certain transfers of technology and enter into business arrangements; and

**WHEREAS**, the Parties wish to govern their ongoing relationships as of the Effective Date and the Agreement Date by the terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intend to be legally bound and hereby agree as follows:

### SECTION 1. PROJECT SCOPE - OVERVIEW

1.1 **Nasdaq Technology.** Nasdaq shall provide software, hardware, data, information, and/or services as set forth herein (the "Nasdaq Technology") to Amex (collectively, the "Transition").

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**a. MDS SYSTEM.** Nasdaq shall provide Amex with services, as set forth herein, related to Nasdaq's MDS System, and permit Amex to have access to the MDS System data and MDS System code, as set forth herein.

**i. MDS SYSTEM DATA.** From the Agreement Date until the Critical Milestone Date for the MDS System, Nasdaq shall continue, as it has prior to the Agreement Date, to operate the MDS System so that Nasdaq makes available to Amex the Amex data that Nasdaq receives on behalf of Amex from the Securities Industry Automation Corporation ("SIAC") into the MDS System ("Amex MDS Data") and Nasdaq hereby assigns to Amex all right, title and interest in and to the Amex MDS Data. As part of the Transition, the Parties shall agree to a plan that permits the transfer, by the Critical Milestone Date for the MDS System, to Amex of the Amex MDS Data received by Nasdaq prior to the Agreement Date. Neither Nasdaq nor Amex shall have any rights in the other's data from the MDS System and Nasdaq shall delete the Amex MDS Data from the MDS System after the Critical Milestone Date for the MDS System. Except as otherwise set forth herein, after the Critical Milestone Date for the MDS System, Amex shall commence the operation of its own database not on Nasdaq's premises as a substitute for the MDS System and Nasdaq shall have no further obligation to provide Amex MDS Data to Amex from the MDS System.

#### **ii. REGULATORY ENHANCEMENTS.**

**General.** From the Agreement Date to the Critical Milestone Date for the MDS System, Amex may request that Nasdaq develop modifications or enhancements to the MDS System that provides the Amex MDS Data that Amex needs for the regulation of the Amex market ("MDS Enhancements"). Nasdaq will provide Amex with a reasonable estimated schedule for the implementation of the MDS Enhancements. If Amex accepts the schedule, Nasdaq shall develop such MDS Enhancements. Nasdaq will have no obligation to provide to Amex modifications or enhancements that Amex does not need for the regulation of the Amex market. Disputes regarding whether a proposed enhancement is needed for the regulation of the Amex market shall be resolved as specified in **Section 12**.

**Cost.** If Nasdaq chooses to implement an MDS Enhancement on behalf of both itself and Amex, Amex shall pay Nasdaq Amex's Share (as defined below) of the Fully-Loaded Cost associated with the MDS Enhancement. If the MDS Enhancement is only to be implemented on behalf of Amex, Amex shall pay Nasdaq for the entire Fully-Loaded Cost associated with the MDS Enhancement. Costs for the creation of an MDS Enhancement shall be paid by Amex as Non-Fund Costs under **Section 7.2**.

**Amortization.** To the extent that Nasdaq can and does amortize (as determined in Nasdaq's sole discretion) the Fully-Loaded Cost related to an MDS Enhancement developed on behalf of both itself and Amex (and Nasdaq shall have no obligation to do so), Nasdaq shall charge Amex the amortized amount of the Fully Loaded Cost. If the amortization period is longer than the period for which Nasdaq is providing the Amex MDS Data, then upon the termination of the provision by Nasdaq of the Amex MDS Data, Amex shall pay the portion of the Fully-Loaded Cost not yet paid by Amex.

**License.** Nasdaq hereby grants Amex an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use and to make Derivative Works based upon, the MDS Enhancements. Amex shall own the modifications, improvements, enhancements and Derivative Works that it creates based on the MDS Enhancements.

**iii. MDS SOFTWARE, DOCUMENTATION AND ASSISTANCE.** As part of the Transition, Nasdaq hereby grants Amex an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use and to make Derivative Works based upon the Software (including source code) for the MDS System used to provide the Amex MDS Data (the "MDS Software"). Amex shall own the modifications, improvements, enhancements and Derivative Works that it creates based upon the MDS Software.

**iv. DEFINITION OF SHARE.** For MDS, Amex's "Share" is equal to the percentage of Amex MDS Data's daily load in the MDS System in relation to the entire daily load of data in the MDS System, except for matters involving costs for storage, in which case Amex's "Share" is the percentage of Amex MDS Data stored in the MDS System with respect to all data stored in the MDS System.

**b. ISS/WISSDM.** Nasdaq shall provide Amex with services, as set forth herein, related to Nasdaq's ISS/WISSDM System and permit Amex to have access to the ISS/WISSDM System and the ISS/WISSDM data, as set forth herein.

**i. ISS/WISSDM DATA.** From the Agreement Date until the Critical Milestone Date for ISS/WISSDM, Nasdaq shall continue, as it has prior to the Agreement Date, to operate the ISS/WISSDM System so that Nasdaq makes available to Amex the data that Nasdaq receives on behalf of Amex into the ISS/WISSDM System ("Amex ISS/WISSDM Data") and Nasdaq hereby assigns to Amex all right, title and interest in and to the Amex ISS/WISSDM Data (including third party vendor feed data, if permitted by Nasdaq's agreement with the vendor). As part of the Transition, the Parties shall agree to a plan that permits the transfer to Amex of the Amex ISS/WISSDM Data received by Nasdaq prior to the date that Nasdaq splits the ISS/WISSDM data feed (including third party vendor feed data, if permitted by Nasdaq's agreement with the vendor and, if not permitted, the parties shall take reasonable steps to obtain the vendor's permission). Neither Nasdaq nor Amex shall have any rights in the other's data from the ISS/WISSDM System. Except as otherwise set forth herein, after the Critical Milestone Date for the ISS/WISSDM System, Amex shall commence the operation of its own database not on Nasdaq's premises as a substitute for the ISS/WISSDM System ("Amex Replacement System") and Nasdaq shall have no further obligation to provide Amex ISS/WISSDM Data to Amex from the ISS/WISSDM System.

**ii.** Nasdaq will provide Amex with the Amex ISS/WISSDM Data at a rate equal to Amex's Share (as defined below) of the Fully Loaded Cost of the ISS/WISSDM System. In addition, from the first anniversary of the "T" date (as that term

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is defined in **Section 3.2**), Amex shall pay a mark-up of \*\*\*\* on the direct cost component of the Share of the Fully-Loaded Cost of the ISS/WISSDM System. The cost for ISS/WISSDM is a Non-Fund Cost as provided in **Section 7.2**.

**iii. REGULATORY ENHANCEMENTS.**

**General.** From the Agreement Date to the Critical Milestone Date for ISS/WISSDM, Amex may request that Nasdaq develop modifications or enhancements that Amex needs for the regulation of the Amex market ("ISS/WISSDM Enhancements") to the ISS/WISSDM System. Nasdaq will provide Amex with a reasonable estimated schedule for the implementation of the ISS/WISSDM Enhancements. If Amex accepts the schedule, Nasdaq shall develop such ISS/WISSDM Enhancements. Nasdaq will have no obligation to provide to Amex modifications or enhancements that Amex does not need for the regulation of the Amex market. Disputes regarding whether a proposed enhancement is needed for the regulation of the Amex market shall be resolved as specified in **Section 12**.

**Cost.** If Nasdaq chooses to implement an ISS/WISSDM Enhancement on behalf of both itself and Amex, Amex shall pay Nasdaq Amex's Share of the Fully-Loaded Cost associated with the ISS/WISSDM Enhancement plus the mark-up in effect at the time the ISS/WISSDM Enhancement is created. If the ISS/WISSDM Enhancement is only to be implemented on behalf of Amex, Amex shall pay Nasdaq for all of the Fully-Loaded Cost associated with the ISS/WISSDM Enhancement plus the mark-up in effect at the time the ISS/WISSDM Enhancement is created. Costs for the creation of an ISS/WISSDM Enhancement shall be paid by Amex as Non-Fund Costs under **Section 7.2**.

**Amortization.** To the extent that Nasdaq can and does amortize (as determined in Nasdaq's sole discretion) the Fully-Loaded Costs related to an ISS/WISSDM Enhancement developed on behalf of both itself and Amex (and Nasdaq shall have no obligation to do so), Nasdaq shall charge Amex the amortized amount of the Fully Loaded Costs. If the amortization period is longer than the period for which Nasdaq is providing the ISS/WISSDM System, then upon the termination of the provision by Nasdaq of the ISS/WISSDM System, Amex shall pay the Fully-Loaded Costs not yet paid by Amex.

**iv. AMEX REPLACEMENT SYSTEM.**

**Safe Harbor.** In order to allow Amex to determine the functionality for the Amex-developed system that will replace Nasdaq's ISS/WISSDM System, Amex shall be entitled to examine the user manual (already provided) to the web version of the ISS/WISSDM System and the ISS/WISSDM application, as observed by an end user at a personal computer accessing the ISS/WISSDM System, to determine the necessary functionality for the Amex Replacement System. Amex is not entitled to any further

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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documentation or access to the ISS/WISSDM System or any other Nasdaq system in order to determine requirements or design for the Amex Replacement System. In addition, Amex may not use, directly or indirectly, any of the current and former Nasdaq employees and independent consultants listed on Exhibit A to design or develop the Amex Replacement System. The foregoing requirements shall be referred to herein as the "Safe Harbor Guidelines."

**Effect of Complying with the Safe Harbor.** If Amex abides by the Safe Harbor Guidelines, Nasdaq will not sue Amex for infringement of Nasdaq's copyrights in and to Nasdaq's ISS/WISSDM System or its documentation or misappropriation of trade secrets contained in Nasdaq's ISS/WISSDM System or its documentation arising out of the development or use of the Amex Replacement System. In addition, if Amex abides by the Safe Harbor Guidelines, Nasdaq will not sue Amex for patent infringement arising out of the development of the Amex Replacement System or Amex's internal use of the Amex Replacement System (*i.e.*, use only on behalf of Amex and its Affiliates). This agreement not to sue will continue even if Amex undergoes a Change of Control so long as Amex complies with the Safe Harbor Guidelines. However, this agreement not to sue will not apply if Amex develops the Amex Replacement System in violation of the Safe Harbor Guidelines.

**Investigation.** Nasdaq reserves the right, but without obligation, to request that the Special Technology Consultant or independent third party reasonably acceptable to Amex perform an independent assessment of the development of the Amex Replacement System in order to determine whether it was developed in conformance with the Safe Harbor Guidelines and Amex shall, upon Nasdaq's reasonable request, provide the auditor reasonable access to the Amex Replacement System and related documentation. Nasdaq shall not be bound by such independent assessment. Nasdaq shall bear all costs of the assessment unless the assessment reveals that Amex has failed to comply with the Safe Harbor Guidelines, in which case Amex shall bear all costs of the assessment.

v. Once the Amex Replacement System is operational, Nasdaq will no longer be obligated to provide Amex with the Amex ISS/WISSDM Data.

vi. **DEFINITION OF SHARE.** For ISS/WISSDM, Amex's "share" is equal to the percentage of Amex issues in the ISS/WISSDM System in relation to the total number of issues in the ISS/WISSDM System for which it performs deficiency processing.

c. **NASDAQ SIEBEL SYSTEM.** Nasdaq shall provide Amex with services, as set forth herein, related to the Nasdaq Siebel System and permit Amex to have certain access to the Nasdaq Siebel System and data in the Nasdaq Siebel System.

i. **NASDAQ SIEBEL SYSTEM DATA.** From the date that Nasdaq splits the Nasdaq Siebel System, until the Critical Milestone Date for the Nasdaq Siebel System, Nasdaq shall continue to make available to Amex the data that Nasdaq receives from Amex as a result of Amex representatives inputting the information about Amex issuers into the Nasdaq Siebel System ("Amex Siebel Data") and Nasdaq hereby

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assigns all right, title and interest in and to the Amex Siebel Data to Amex. As part of the Transition of the Nasdaq Siebel System, the Parties shall agree to a plan that permits the transfer to Amex of the Amex Siebel Data received by Nasdaq prior to the date that Nasdaq splits the Nasdaq Siebel System data feed. Neither Nasdaq nor Amex shall have any rights in the other's data from the Nasdaq Siebel System. Amex shall pay Nasdaq Amex's Share (as defined below) of the Fully Loaded Cost of the Nasdaq Siebel System. The costs for the Nasdaq Siebel System are Non-Fund Costs as provided in **Section 7.2**

ii. **SIEBEL SOFTWARE, DOCUMENTATION AND ASSISTANCE.** From the Agreement Date to the Critical Milestone Date for the Nasdaq Siebel System, Nasdaq shall provide Amex reasonable assistance and training, as set forth in this Agreement, to allow Amex to prepare for the installation, operation, and maintenance of a copy of the Siebel System, including the Nasdaq-developed "many to many" and "power query" functions ("Nasdaq-Developed Functions") not on Nasdaq's premises. Upon delivery of the Nasdaq-Developed Functions Software and Documentation to Amex, Nasdaq hereby grants to Amex, a perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free personal right and license to use, copy as needed, modify and create Derivative Works based upon, the Nasdaq-Developed Functions and related Documentation owned by Nasdaq and provided by Nasdaq for the sole purpose of Amex installing, operating, and maintaining Amex's copy of the Nasdaq-Developed Functions for its own internal use with the Amex system that will replace the Nasdaq Siebel System. Amex will not be entitled to any other functionality, improvement, enhancement, or modification made by or for Nasdaq to the Nasdaq Siebel System after delivery to Amex. Amex shall own the modifications, improvements and enhancements that it creates to the extent that such modifications, improvements and enhancements do not copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information. Nasdaq shall own (and be provided a copy of) the modifications, improvements and enhancements that Amex creates to the extent that such modifications, improvements and enhancements do copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information and the Derivative Works that Amex creates. To the extent such modifications, improvements and enhancements do copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information or to the extent Amex creates a Derivative Work, Nasdaq hereby grants to Amex a non-exclusive, non-transferable, non-sublicensable, royalty-free personal right and license to use such modifications, improvements and enhancements or Derivative Work for the sole purpose of Amex installing, operating, and maintaining the Nasdaq-Developed Functions for Amex's own internal use. Amex represents that it has obtained its own license from Siebel Systems, Inc. in order to operate Amex's replacement for the Nasdaq Siebel System.

iii. **DEFINITION OF SHARE.** For the Siebel System, Amex's "Share" is equal to the percentage of Amex issues in the Nasdaq Siebel System in relation to the total number of issues in the Nasdaq Siebel System.

d. **AMEX.COM; AMERICANSTOCKS.COM.** Nasdaq shall provide Amex with certain access and services related to the web sites amex.com and americanstocks.com (collectively, "amex.com").

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i. **AMEX.COM; AMERICANSTOCKS.COM MAINTENANCE.** Commencing with the Agreement Date and until the Critical Milestone Date for amex.com, Nasdaq will continue to host said amex.com and will provide certain maintenance services for amex.com. The maintenance services shall be as set forth in an attachment, to be agreed to by the parties, to the Transition Plan. On the Critical Milestone Date for amex.com, Nasdaq will cease hosting amex.com and cease providing the previously agreed to maintenance services.

ii. **AMEX.COM; AMERICANSTOCKS.COM CODE.** Amex currently possesses code for amex.com and americanstocks.com which Nasdaq provided for Amex review in anticipation of the Transition ("Amex.com Code"). Amex had expressed a desire to incorporate part of the said code into a new successor site to amex.com and americanstocks.com. Subject to **Section 6.2**, Nasdaq hereby grants Amex an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use, and create Derivative Works based upon the

Amex.com Code (except for the Nasdaq logo ticker) and related Documentation. Subject to **Section 6.2**, Amex shall own the modification, improvements, enhancements and Derivative Works that it creates based on the Amex.com Code (except for the Nasdaq logo ticker).

**e. AMEXTRADER.COM.**

**i. GENERAL.** Nasdaq has provided Amex reasonable assistance and training, as set forth in this Agreement, to allow Amex to prepare for the installation, operation, and maintenance of a copy of the web site Amextrader.com on Amex's premises. Nasdaq hereby grants to Amex a non-exclusive, non-transferable, non-sublicensable, personal right and license to use, copy as needed, modify the Amextrader.com code, and related Documentation provided by Nasdaq for the sole purpose of Amex installing, operating, and maintaining Amex's copy of Amextrader.com. Amex will not be entitled to any version other than the Amextrader.com code delivered to Amex, nor to any other functionality, enhancement, or modification made by or for Nasdaq to Amextrader.com or Nasdaqtrader.com, upon which amextrader.com is based, after delivery to Amex. Amex shall own the modifications, improvements and enhancements that it creates to the extent that such modifications, improvements and enhancements do not copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information. Nasdaq shall own (and be provided a copy of) the modifications, improvements and enhancements that Amex creates to the extent that such modifications, improvements and enhancements do copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information and the Derivative Works that Amex creates. To the extent such modifications, improvements and enhancements do copy, duplicate, reveal or otherwise incorporate Nasdaq's Intellectual Property or Confidential Information or Amex creates a Derivative Work, Nasdaq hereby grants to Amex a non-exclusive, non-transferable, non-sublicensable, personal right and license to use such modifications, improvements and enhancements or Derivative Work for the sole purpose of Amex installing, operating, and maintaining Amex's copy of the web site Amextrader.com for Amex's own internal use.

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**ii. ETF TRADER CODE.** Subject to **Section 6.2**, but notwithstanding anything otherwise set forth herein, Nasdaq hereby grants to Amex an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use, copy as needed, modify and create Derivative Works based upon the code and related documentation for the exchange traded funds section of Amextrader.com that it possesses as of the Agreement Date ("ETF Trader Code"). Subject to **Section 6.2**, Amex shall own the modifications, improvements, enhancements and Derivative Works that it creates based on the ETF Trader Code.

**iii. CHANGE OF LOOK AND FEEL.** No later than ninety (90) days after the Critical Milestone Date for amex.com, Amex shall alter the "look and feel" of the Amextrader.com site so that the site does not resemble the Nasdaqtrader.com site. Upon such alteration, but subject to **Section 6.2**, (i) Nasdaq hereby grants to Amex an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license, with the right to sublicense, to use, copy as needed, modify and create Derivative Works based upon the Amextrader.com code and related documentation; and (ii) Amex shall own the modifications, enhancements and Derivative Works that it creates based on the Amextrader.com code.

**f. NASDAQ LOGO TICKER.** As part of maintaining amex.com, Nasdaq will maintain the version of the Nasdaq logo ticker (including the logos) that is currently on amex.com until its maintenance obligations end. Amex agrees that should an issuer object to the placement of its logo on amex.com, Nasdaq shall request that the issuer submit to Nasdaq a written objection and such written objection shall be submitted to the Special Technology Consultant. Nasdaq may remove that issuer's logo from the Nasdaq logo ticker on amex.com five (5) days after the submission to the Special Technology Consultant. Amex will not be entitled to any version of the Nasdaq logo ticker other than the version that is currently on Amex.com, nor to any other functionality, enhancement, or modification made by or for Nasdaq to the Nasdaq logo ticker and Amex has no ownership interest in the Nasdaq logo ticker.

**g. LISTING INVESTIGATION SERVICES.** Nasdaq shall provide to Amex certain Listing Investigation Services as agreed to by the parties, that shall terminate 18-24 months after the "T" date as defined in **Section 3.2**. Amex shall provide notice to Nasdaq as to a definite Critical Milestone Date for Listing Investigation Services no later than twelve (12) months after the "T" date.

**h. NASDAQ-AMEX DOMAIN NAME.** The ownership of "nasdaq-amex.com" shall be transferred to NASD. NASD shall maintain that registration in perpetuity, and NASD will ensure that "nasdaq-amex.com" will not be used as a URL by any individual or entity.

**i. MARKET OPERATIONS SERVICES.** Until the Critical Milestone Date for Market Operations Services, Nasdaq shall continue to provide Amex with services from Nasdaq's Market Operations Department ("Market Operations Services") as agreed to by the Parties.

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**j. AMEXONLINE.** From the Agreement Date to the Critical Milestone Date for AmexOnline, Nasdaq will continue to provide AmexOnline and AmexOnline support as it was implemented on 12/31/01 at a rate equal to \$\*\*\*\*\* for the 2002 calendar year. To the extent that Nasdaq is contractually bound to pay I/B/E/S-Thomson Financial for the data feed to AmexOnline after the Critical Milestone Date through 2003, Nasdaq and Amex agree to use their best efforts in negotiations with Thomson Financial for the right to stop payment at the Critical Milestone Date. If, despite Nasdaq's and Amex's best efforts, Nasdaq is still obligated to pay some or all of the \$\*\*\*\*\* that Nasdaq has previously committed for the Amex portion of the I/B/E/S-Thomson data feed in 2003, Amex will reimburse Nasdaq for the remaining portion of the Amex-related commitment that remains up to \$\*\*\*\*\*. The cost for AmexOnline is a Non-Fund Cost as provided in **Section 7.2**

**k. ECONOMIC RESEARCH DATABASES.** Until the Critical Milestone Dates for the Economic Research Databases, Nasdaq shall continue to provide to Amex certain data from Nasdaq economic research databases as it has prior to the Agreement Date and as further described herein. Nasdaq shall provide summary data on all markets from the Daily, Monthly, Yearly and NProf data files for so long as Amex MDS Data is provided. Nasdaq shall provide data from the Delist and Liquidity databases until the Critical Milestone Dates for those databases. Amex acknowledges that the Delist and Liquidity databases will not be updated in any manner by Nasdaq. Nasdaq shall provide data from the Short Interest database until the Critical Milestone Date for that database. Nasdaq shall continue to provide Amex certain data in the DataMart and CommFin databases as it has prior to the Agreement Date; however, Nasdaq reserves the right to remove only those data elements that are based on underlying data or raw data that is both confidential and proprietary to Nasdaq. The reports provided by Nasdaq under this Section and all Intellectual Property in and to the same shall remain owned by Nasdaq, provided that Nasdaq hereby assigns to Amex all right, title and interest in and to the data provided from the Amex CommFin database. Nasdaq hereby grants to Amex a non-exclusive, non-transferable, non-sublicensable, personal right and license to reproduce, modify and use for internal purposes only (which may include use

in connection with marketing), the data and reports provided under this Section. Nasdaq shall provide this data through the Critical Milestone Dates for the Economic Research Databases for \$\*\*\*\*. The cost for data from Economic Research Databases is a Non-Fund Cost as provided in **Section 7.2**.

1.2 **Purpose of the Agreement.** The Parties shall work in good faith to implement the Transition. The Parties agree that the Transition requires efforts on the part of all of the Parties. This Agreement contains a framework for the allocation of the responsibilities and schedules for completing the Transition.

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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1.3 **The Parties' Responsibilities.** Each Party shall perform such tasks as assigned to it in the Transition Plan or as agreed to by the Parties to implement and complete the Transition. The Parties shall give their top priority to the Transition.

1.4 **Omitted Technology.** In the event that the description of Nasdaq Technology is incomplete in that there is software, data, information, and/or services that Nasdaq has provided prior to the Agreement Date or is providing to Amex, as of the Agreement Date, or software, data, information, and/or services that Amex provided prior to the Agreement Date or is providing to Nasdaq as of the Agreement Date that was inadvertently omitted from the Nasdaq Technology, the Parties shall meet as soon as possible to discuss the terms of the transition of that omitted technology with the intention that such terms will be similar to those governing, as set forth herein, that part of the Nasdaq Technology that is similar to the omitted technology, as an aid to transitioning the omitted technology. Any disagreements between the Parties as to the omitted technology will be raised as a Dispute under the Master Agreement

1.5 **Allocation of Responsibilities as to Third Party Data, Information, Software and Technology for Amex.com.** Amex acknowledges that third party data, information, software and technology are part of Amex.com. Amex has undertaken to obtain separate agreements with all vendors of such data, information, software and technology to the extent it will continue to be received by Amex. As of the Agreement Date, Amex has entered into agreements with all third party data vendors that it knows are providing data for Amex.com except for Bridge Information Systems ("Bridge"). Amex has reached conceptual agreement with Bridge regarding data for Amex.com, but has not executed a definitive agreement with Bridge regarding that data. Amex shall work diligently to execute a definitive agreement with Bridge consistent with the conceptual agreement between Amex and Bridge. If Amex is unable to reach conceptual agreement with Bridge consistent with the conceptual agreement, the Special Technology Consultant shall dictate the parties' obligations with respect to Bridge data. Nasdaq shall provide Amex with reasonable assistance in Amex's efforts to enter into a separate agreement with Bridge. To the extent StockPoint has charged Amex more than \$\*\*\*\*\* for 2001, Nasdaq and Amex shall share the excess equally, but offset by any savings Amex realizes on its contracts with Bridge and Financial Insight Systems/EDGAR Online over its amount previously budgeted for 2001. To the extent Nasdaq bears any liability to third party providers for Amex.com with respect to use of their data, information, software or technology by Amex after Amex assumed responsibility for their data, information, software or technology, Amex shall indemnify and hold Nasdaq harmless for one half of any such liability.

1.6 **Change of Nasdaq Platform.** If Nasdaq intends on its own initiative to change any system used to provide Nasdaq Technology (including, but not limited to, changing the platform on which such system runs), it shall give notice to Amex as early as reasonably practical and give Amex the option to have the Nasdaq Technology

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provided from the changed system. Amex may elect to have the Nasdaq Technology continue to be provided from the unchanged system, provided that Amex acknowledges that the costs of providing that technology may increase as Nasdaq may have reduced economies of scale.

## SECTION 2. STEERING COMMITTEE

2.1 **Steering Committee; TSC Co-Chairs.** The Parties shall jointly establish a steering committee (the "Technology Steering Committee") to supervise the performance of the Parties pursuant to this Agreement and to address legal, technical, operational, and regulatory issues that arise out of the operation of the Transition, and each Party has or shall appoint a Technology Steering Committee Co-chair (the "TSC Co-Chairs") that will be the primary contact between the Parties hereto and who will have the authority to bind the Party. The TSC Co-Chairs are \*\*\*\*\*(Amex), \*\*\*\*\*(Nasdaq), and \*\*\*\*\*(NASD). All decisions of the TSC Co-Chairs shall be unanimous. The Technology Steering Committee shall be comprised of members from the Nasdaq, NASD and Amex Families as may be agreed to by the TSC Co-Chairs and set forth in the Transition Plan. Each TSC Co-Chair may appoint a designee to fulfill some or all of that TSC Co-Chair's responsibility.

2.2 **Meetings.** The Parties agree that each Party shall provide to the other Parties the names of its staff that shall be responsible for meeting Milestone Dates. The Technology Steering Committee shall meet, either in person or by or a conference call, at the request of a Party, but no less than once a month, until the last of the Critical Milestone Dates (as extended by any period of Post-Transition Support under **Section 3.5**) to discuss progress of the Transition. The Special Technology Consultant will attend all Technology Steering Committee meetings. The Transition Plan shall serve as an agenda for each meeting and the individuals appointed by the TSC Co-Chairs shall update the Transition Plan after each meeting.

2.3 **Progress Report.** After each meeting or conference call, the appointed Technology Steering Committee member(s) shall (and any other member may) update the Transition Plan including, but not limited to, specifying in detail:

a. any critical problem encountered, discovered, or continuing during the preceding month, as the case may be, including, without limitation, the failure of any Party in performing, any delay of any Party in performing or the inadequate performance of any Party which may prevent or tend

to prevent completion of any task by the Milestone Dates set forth in the Transition Plan;

b. the estimated length of any delay which may result from any critical problem; and

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c. the specific steps taken or proposed to be taken by either or both Parties, as appropriate, to remedy such critical problem.

### SECTION 3. TRANSITION PLAN

3.1 **Transition Plan.** The Parties have begun to develop a detailed implementation plan (the "Transition Plan") for the Transition. As used in this Agreement, the term "Transition Plan" shall incorporate time schedules, equipment requirements and other matters referenced in this Agreement. The Transition Plan shall allocate the development and implementation responsibilities of each Party as set forth hereunder and shall describe, but not be limited to, the following:

- a. transitioning amextrader.com;
- b. maintaining amex.com and americanstocks.com;
- c. providing certain services through the MDS System; the ISS/WISSDM System; and the Siebel System as set forth herein;
- d. developing a timetable for the performance of each task (or completion of each deliverable) to be performed by a party;
- e. developing a list of third party providers/vendors with which Amex must execute its own agreements; and
- f. identifying the software, equipment and personnel that Amex must provide for the Transition (except as otherwise set forth herein).

Nasdaq will provide appropriate software and personnel to support its responsibilities in the Transition (except as otherwise set forth herein).

3.2 **Milestone Dates.** The Transition Plan shall include dates by which certain tasks must be completed ("Milestone Dates"), some Milestone Dates to be labeled as "critical" ("Critical Milestone Dates"), for successful and timely implementation of the Transition. Parts of the Nasdaq Technology shall have different Critical Milestone Dates. The Critical Milestone Dates are as follows ("T" being the earlier of the Agreement Date or the date on which Amex first obtains funding for the Transition):

- for Siebel: T + 3 months;
- for AmexTrader: T + 3 months;
- for ISS/WISSDM: T + 2 years;
- for MDS: T + 1 year;
- for Amex.com/americanstocks.com: T + 5 months;
- for Listing Investigations: T + 18-24 months;

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- for Market Operations: T + 12 months;
- for AmexOnline: T + 12 months; and
- for Economic Research Databases:
  - DataMart: June 30, 2002;
  - CommFin: June 30, 2002;
  - Summary data (Daily, Monthly, Yearly, NProf): T + 12 months;
  - Delist and Liquidity data: T + 3 months but in no event beyond March 31, 2002;
  - Short Interest data: T + 3 months.

Anything herein to the contrary notwithstanding, the Critical Milestone Dates may only be altered by written agreement of the TSC Co-chairs. The Parties recognize that all deliverables and schedules related to such deliverables, including the Milestone Dates but not including the Critical Milestone Dates, are based on certain assumptions about the basic functionalities of each others' systems and that each deliverable and schedule related to the

deliverable are contingent on the terms and conditions preceding the event, as specified in the Transition Plan. If the Transition Plan must be modified, the Parties agree to follow the procedures in **Section 3.3** below.

3.3 **Modifications.** Prior to a Critical Milestone Date, a Party may request a modification to that part of the Transition Plan leading up to that Critical Milestone Date which request shall be presented to the other Parties in writing. Any such request shall indicate whether the modification, in the reasonable and good faith judgment of the requesting Party, would result in an extension of, or other change to, the Milestone Dates and shall be directed to the TSC Co-chairs. Such a request shall not be unreasonably denied. However, if a Party receiving the request believes that the request for modification is not reasonable based on the determination that the Critical Milestone Date will not be met, such request for modification will be raised as a Dispute under the Master Agreement.

3.4 **Extension of Milestone Dates.**

a. The Parties acknowledge that although the Parties may agree, from time to time, to modify schedules and other important Milestone Dates, none of the Parties has wide-ranging flexibility to extend a Critical Milestone Date as may be requested by any other Party. Anything herein to the contrary notwithstanding, in the event of any delay, or threatened delay in meeting a Critical Milestone Date, other than an event of Force Majeure discussed below in **Section 3.4(b)**, a Party shall raise the issue as a Dispute under the Master Agreement. The Parties may waive raising such issue as a Dispute if they all agree.

b. The Parties' rights and obligations in the event of an occurrence of force majeure shall be as set forth in Article 8 of the Master Agreement.

c. In order to anticipate and reduce the effect of delays or failures, the Parties agree to notify each other as soon as there is any reason to believe that any Milestone Date will be delayed.

3.5 **Post-Transition Support.**

a. Notwithstanding anything otherwise set forth in the Master Agreement, should Amex require Nasdaq to continue to provide Amex with Nasdaq Technology to Amex as set forth herein after a Critical Milestone Date ("Post-Transition Support"), Amex shall provide Nasdaq written notice specifying the period of support requested (not to exceed ninety (90) days as soon as Amex has reason to believe that such Post-Transition Support will be necessary, but no later than thirty (30) days prior to the Critical Milestone Date for that part of the Nasdaq Technology. Amex may request that, for all Nasdaq Technology except the Economic Research databases, Post-Transition Support be provided for up to three additional periods (including in increments but each period not to exceed ninety (90) days by providing notice to Nasdaq as soon as Amex has reason to believe that such additional Post-Transition Support will be necessary, but at least thirty (30) days prior to the expiration of the then-current period of Post-Transition Support. Amex may, thus, for all Nasdaq Technology except the Economic Research databases, request Post-Transition Support for up to three hundred and sixty (360) days. For the DataMart and CommFin Economic Research databases (and only those Economic Research databases), Amex may request only one Post-Transition Support period not to exceed ninety (90) days.

b. If properly requested, Nasdaq shall provide Post-Transition Support for Nasdaq Technology other than the DataMart and CommFin databases at a rate equal to i) the Fully-Loaded Cost for the Nasdaq Technology associated with the Post-Transition Support, plus ii) the mark-up specified below on the direct cost component of that Fully Loaded Cost. For such Nasdaq Technology used to support both Nasdaq and Amex, Amex will only be responsible for its Share of that Fully Loaded Cost plus the mark-up on its Share. For MDS, ISS/WISSDM and Siebel, Amex's "Share" shall have the meaning specified in **Sections 1.1(a)(iv), 1.1(b)(vi), 1.1(c)(iii)**, respectively. For AmexOnline, Amex's "Share" shall be \*\*\*\*\*. For the DataMart and CommFin databases, if properly requested, Nasdaq shall provide one ninety (90) day period of Post-Transition Support for \*\*\*\*\*. These costs shall be Non-Fund Costs as provided in **Section 7.2**.

c. If Nasdaq develops any MDS Enhancements or ISS/WISSDM Enhancements during a period of Post-Transition Support, in addition to any Fully Loaded Costs to be paid by Amex for the enhancements, Amex shall pay a mark-up on the direct cost component of the Fully Loaded Costs incurred during the period of Post-Transition Support as specified below. Notwithstanding the foregoing, if the original

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schedule proposed by Nasdaq for the development of the enhancement called for it to be complete before the relevant Critical Milestone Date or the end of a period of Post-Transition Support, Amex will not be required to pay any mark-up resulting from the extension of development into a first or subsequent Post-Transition Support period if the delay was caused by Nasdaq's negligence or willful delay, or Amex approved the delay in writing; and Amex will only be required to pay one-half of the otherwise applicable markup if the delay was not caused by the negligence or willful delay of either party. If the delay was caused by the negligence or willful delay of Amex, the full mark-up will apply.

d. The mark-up on the direct costs component of Fully Loaded Costs shall be as follows:

| Technology  | First 90-Day Period | Second 90-Day Period | Third 90-Day Period | Fourth 90-Day Period |
|---|---------------------|----------------------|---------------------|----------------------|
| MDS, Listing Investigations   | ****                | ****                 | ****                | ****                 |
| ISS/WISSDM  | ****                | ****                 | ****                | ****                 |
| Siebel, AmexOnline, amex.com, americanstocks.com, amextrader.com, Market Operations | ****                | ****                 | ****                | ****                 |

e. For purposes of **Section 1.1**, the Critical Milestone Date for each component of Nasdaq Technology shall be deemed extended to the end of any period of Post-Transition Support for that component.

3.6 **Early Termination of Receipt of Nasdaq Technology.** Upon sixty (60) days' written notice, Amex may discontinue the receipt of any item of the Nasdaq Technology. Amex shall be liable for all costs due to Nasdaq pursuant to this Agreement up to the effective date of discontinuance plus Nasdaq's reasonable Fully-Loaded Costs associated with winding down the provision of that element of the Nasdaq Technology. It is anticipated that these costs may include amounts already expended in the development of enhancements for Amex, termination fees due to consultants, severance amounts paid to employees who were solely dedicated to providing services for the Transition (but such fees for any individual employee shall not exceed Nasdaq's standard severance package for an employee who had been working at Nasdaq for the same period of time as that employee had been performing services solely for Amex) and depreciation for equipment that was expected to be used up to a Critical Milestone Date. Nasdaq will use commercially reasonable efforts to mitigate these costs.

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3.7 **Post-Critical Milestone Date.** Subject to this Agreement and assuming all obligations leading up to the Critical Milestone Dates are fulfilled, after the Critical Milestone Dates, the Transition shall be complete and the Parties will no longer have any obligations to the other Parties as the operation, development, maintenance or support of the Nasdaq Technology, unless the Parties otherwise agree (except with respect to those parts of the Nasdaq Technology for which Amex has the right as set forth herein to request Post-Transition Support, where if Amex elects to receive Post-Transition Support, if applicable, in which case the Parties obligations with respect to those parts of the Nasdaq Technology shall terminate at the end of the period of Post-Transition Support).

3.8 **Change of Control.**

a. **MDS.** Until the Critical Milestone Date for the MDS system (as extended by any period of Post-Transition Support), Amex will be entitled to receive Amex MDS Data for its own base issues and issues not added as a result of Change of Control that involves, directly or indirectly, a listing venue. In addition, if Amex undergoes a Change of Control that involves, directly or indirectly, a listing venue (including, but not limited, to instances where the Change of Control involves a Person that is an Affiliate of a listing venue), the number of Amex issues included in the Amex MDS Data as a result of the Change of Control may increase annually by up to \*\*\*\* of the number of Amex base issues, as of the time of the Change of Control (e.g., if on January 1, 2003, Amex is acquired by or acquires another exchange and, at that time, Amex has 800 equity listings, it will be entitled in 2003 to receive Amex MDS Data for up to 80 issues that are Amex issues due to the Change of Control, and 168 such issues in 2004). Issues that are brought to list on Amex by Persons who are not listing venues, but who have acquired Control of Amex shall not be considered Amex issues as a result of Change of Control.

b. **ISS/WISSDM.** From the date that Nasdaq splits the ISS/WISSDM data feed until the Critical Milestone Date for the ISS/WISSDM System (as extended by any period of Post-Transition Support), Amex will be entitled to the use of the ISS/WISSDM System for its own base issues and issues not added as a result of Change of Control that involves, directly or indirectly, a listing venue. In addition, if Amex undergoes a Change of Control that involves, directly or indirectly, a listing venue (including, but not limited, to instances where the Change of Control involves a Person that is an Affiliate of a listing venue), the number of Amex issues included in the ISS/WISSDM System as a result of the Change of Control may increase annually by up to \*\*\*\* of the number of Amex base issues, as of the time of the Change of Control (e.g., if on January 1, 2003, Amex is acquired by or acquires another exchange and, at that time, Amex has 800 equity listings, it will be entitled in 2003 to access the ISS/WISSDM

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\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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System for up to 80 issues that are Amex issues due to the Change of Control, and 168 such issues in 2004). Issues that are brought to list on Amex by Persons who are not listing venues, but who have acquired Control of Amex shall not be considered Amex issues as a result of Change of Control.

c. **Siebel.** During any period of Post-Transition Support for Siebel (as extended by any period of Post-Transition Support), Amex will be entitled to the use of the Siebel System for its own base issues and issues not added as a result of Change of Control that involves, directly or indirectly, a listing venue. In addition, if Amex undergoes a Change of Control that involves, directly or indirectly, a listing venue (including, but not limited, to instances where the Change of Control involves a Person that is an Affiliate of a listing venue), the number of Amex issues included in the Siebel System during the period of Post-Transition Support as a result of the Change of Control may increase annually by up to \*\*\*\* of the number of Amex base issues, as of the time of the Change of Control. Issues that are brought to list on Amex by Persons who are not listing venues, but who have acquired Control of Amex shall not be considered Amex issues as a result of Change of Control.

d. **Economic Research Databases.** If Amex undergoes a Change of Control that involves, directly or indirectly, a listing venue (including, but not limited, to instances where the Change of Control involves a Person that is an Affiliate of a listing venue), Nasdaq may immediately terminate the provision of all Services related to the CommFin and DataMart Economic Research databases.

e. **General.** If Amex undergoes a Change of Control involving an acquisition by or other combination, direct or indirect, with the New York Stock Exchange, Nasdaq may immediately terminate the provision of all Services related to ISS/WISSDM. For all Nasdaq Technology (other than ISS/WISSDM when the New York Stock Exchange is involved), if the Amex undergoes a Change of Control, Nasdaq will continue to provide such Nasdaq Technology to Amex until the earlier of: (i) the Critical Milestone Date for such Nasdaq Technology; or (ii) six (6) months from the date that Amex undergoes the Change of Control. During that six (6) month period or up until the Critical Milestone Date, as applicable, Amex shall pay an additional mark-up (in addition to any other mark-up that may be applicable) on the direct cost component of all relevant Fully Loaded Costs equal to the mark-up that would

apply during the first Post-Transition Support period for the relevant Nasdaq Technology. After that date, Nasdaq may stop providing such Nasdaq Technology and any further Post-Transition Support.

#### SECTION 4. STAFFING, TRAINING AND EQUIPMENT.

4.1 **Mutual Obligation to Provide Information and Personnel.** Each Party shall make available to the other Parties such information and personnel knowledgeable in its operations as specified in the Transition Plan or agreed to by the Parties to facilitate timely completion of a Party's obligations. The Parties shall staff the project in accordance with the Transition Plan or as otherwise agreed to hereafter.

4.2 **Training.** Nasdaq shall provide all reasonable instruction and training to enable Amex to understand the Nasdaq Technology as provided by Nasdaq. Instruction

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and training shall be limited to the code and configuration specific to the applications. Nasdaq will not provide instruction or training on Oracle, C++ or other programming protocols, third party software packages (except for Siebel as provided herein) or training on production support for NT, Sequent, Unisys, or Oracle platforms and operating systems.

4.3 **Equipment.** Each Party shall provide all requisite hardware and other equipment assigned to it in the Transition Plan or as agreed to by the Parties.

#### SECTION 5. EMPLOYEES

5.1 **Performance Standards.** The standards for the performance of the Nasdaq Technology furnished pursuant to the terms of this Agreement that were in effect upon the Effective Date of this Agreement will remain in full force and effect until such time as the Parties may mutually agree upon appropriate new criteria to replace them. All other work or tasks shall be performed in a good and workmanlike manner.

5.2 **Conduct of Personnel.** Each Party warrants that while on-site at facilities of the other Parties, its personnel will comply with the sections of the other Parties' Employee Handbooks related to Equal Employment Opportunities, Sexual Harassment, and Substance Abuse Policies as if its personnel were employees of such Parties. Each Party will provide the other Parties with a current copy of its Employee Handbook within ten (10) days of the Effective Date of this Agreement. Each Party will also promptly provide the other Parties with copies of any updates to its Employee Handbook.

5.3 **Security.** Each Party will instruct its personnel to comply with the security regulations in effect at the facilities of the other Parties that its personnel may visit.

5.4 **Removal of Personnel.** In the course of performing pursuant to this Agreement, if a Party notifies either of the other Parties that it is not satisfied with the performance or conduct of an employee of that Party, that Party will promptly a) investigate the matter and take appropriate action which may include: (i) removing the applicable person from that Party's performance of this Agreement and providing the notifying Party with prompt written notice of such removal; and (ii) replacing the applicable person with a similarly qualified individual; and b) take such other action as it deems appropriate to prevent a recurrence. For alleged breaches of security and violations of confidentiality while a Party's personnel are on another Party's site or in instances where a Party reasonably believes that another Party's personnel pose a risk to the operation of its business or other bona fide business reason while on that Party's site, the Party may remove the personnel in question, *provided, that*, it first notifies the other Party of its concerns if it is reasonably feasible for it to furnish such notice. The Party whose personnel were removed will promptly replace such personnel at its own cost.

5.5 **Improper Conduct.** In the event that a Party suspects that any employee of another Party who has been involved in the performance of this Agreement has been involved in improper, illegal or unethical use of any data or information, including, but not limited to, Nasdaq Technology or misuse of other Confidential Information, gained or

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accessed from such performance or received as part of this Agreement furnished by such other Party, then it may notify the other Party and request that it conduct an investigation of such individual. The Party requesting such investigation will provide such assistance to the Party conducting such investigation as the investigating Party may reasonably request.

#### SECTION 6. OWNERSHIP AND LICENSES

6.1 **Ownership.** NASD and Amex do not acquire any right or interest in the Nasdaq Technology, except as expressly provided herein. Unless otherwise set forth herein, title and full ownership rights in and to all Nasdaq Technology, in whole or in part, whether copies of such technology were delivered to NASD or Amex or subsequently made by NASD, Amex or on either's behalf, shall remain with Nasdaq. In no event shall any licenses granted in this Agreement be construed to include the right to market, license, or otherwise transfer or assign all or any portion of the Nasdaq Technology, except as expressly provided herein. In the event NASD or Amex is vested by operation of law or otherwise with the ownership of any right, title or interest in any Derivative Work specified hereunder as to be owned by Nasdaq, NASD and Amex hereby assign and transfer to Nasdaq, and agree to cause any of their officers, employees, or agents who may be vested with such ownership to assign and transfer to Nasdaq, by written agreement satisfactory to Nasdaq, any and all right, title, and interest in such Derivative Work. In the event NASD or Nasdaq is vested by operation of law or otherwise with the ownership of any right, title or interest in any data specified hereunder as to be owned by Amex, NASD and Nasdaq hereby assign and transfer to Amex, and agree to cause any of their officers, employees, or agents who may be vested with such ownership to assign and transfer to Nasdaq, by written agreement satisfactory to Amex, any and all right, title, and interest in such data.

6.2 **Corporate Names; Trade/Service Marks.** Nothing in the Agreement shall be deemed to grant a Party the right to use the other Parties' names, trade marks, or service marks.

6.3 **On-Site Visits.** The Transition Plan may include a reasonable number of on-site visits to the other's facilities by each Party's staff at a time and place agreed by the Parties.

6.4 **Additional Terms.** The following provisions shall also be applicable:

a. Use of the Nasdaq Technology shall be limited to the purposes set forth in the Agreement.

b. Amex shall accurately produce and reproduce all Nasdaq Intellectual Property notices on all copies Amex receives, produces or reproduces of the Nasdaq Technology and any other Nasdaq Confidential Information. In no event shall Amex remove or alter any such notices from any materials.

c. The Software and Documentation shall be considered Confidential Information as set forth in the Agreement, notwithstanding the lack of any marking as to confidentiality, and they shall be treated as such by NASD and Amex.

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d. NASD and Amex shall attest in writing to the number and location of all copies of the Software upon ten (10) days prior written notice from Nasdaq.

e. Documentation furnished to NASD and Amex may be reproduced as needed by Amex for its authorized users, for the purposes for which the Documentation was provided.

6.5 **Return or Destruction.** If Amex discontinues use without the intention to resume permitted use of any Nasdaq Technology that is not perpetually licensed to Amex hereunder, it will notify Nasdaq in writing and return all copies of such Nasdaq Technology to Nasdaq if Nasdaq requests the same in writing within thirty (30) days after Amex's notice of discontinuance. If Nasdaq does not request a return of such Nasdaq Technology in writing within thirty (30) days after Amex's notice of discontinuance, Amex shall certify destruction of the same to Nasdaq.

6.6 **Exclusion of All Other Rights.** Except as expressly provided herein, the Parties are granted no rights or licenses whatsoever to the property or rights of the other Parties. All rights and licenses not expressly granted in this Agreement are hereby expressly reserved by owners of those rights or licenses.

## SECTION 7. COSTS AND PAYMENT PROCEDURES.

7.1 **Payment Fund and Billing Procedures.** Within five (5) days of the Agreement Date, NASD shall establish on behalf of the Parties an interest-bearing money market account at a financial institution where NASD is currently a customer that will serve as the account ("Fund") from which the Parties shall obtain reimbursement for certain reasonable costs that they incur as Amex becomes separate from Nasdaq Technology. ("Self-Sufficiency Costs"). A description of the types of Self-Sufficiency Costs that have been approved is attached hereto and incorporated herein as Exhibit B.

a. NASD shall be the administrator of the Fund and its cost of administration shall be considered a Self-Sufficiency Cost.

b. Nasdaq, NASD and Amex shall deliver to each of the TSC Co-Chairs at the Technology Steering Committee meetings their respective invoices, with any necessary backup, in form reasonably agreeable to the Parties, with respect to the amount of the Self-Sufficiency Costs borne by such Party for the period preceding the Technology Steering Committee meeting.

c. Following delivery of the documentation referred to above, the Party receiving such documentation and/or its representative(s) shall be given reasonable opportunity to review the documentation and other underlying information related to the above and to discuss the same with the Party delivering the documentation. A Party shall have until ten (10) days, absent bad faith on the part of the Party delivering the documentation, to give written notice in reasonable detail to the Party supplying the documentation (through its TSC Co-Chair) of any disagreement regarding such report (an "Objection Notice"). Copies of such Objection Notices shall be forwarded to the other TSC Co-Chair. Absent such timely delivery of an Objection Notice and bad faith on the Party delivering the documentation, the documentation as delivered shall be

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presumptively binding (but such designation shall not impact the audit rights of a Party pursuant to the Master Agreement) on the Parties hereto. Any objections shall be resolved pursuant to the Dispute Resolution procedures set forth in the Master Agreement.

d. Invoices that are presumptively binding shall be submitted to the NASD's designee for payment to NASD, Amex or Nasdaq, as applicable. Upon notice from NASD that funds are needed, NASD and Nasdaq will each deposit into the Fund equal amounts of the funds needed within fifteen (15) days. The total amount to be deposited into the Fund over the life of the Fund shall be \$29 million. NASD and Nasdaq shall each be responsible for depositing no more than \$14.5 million in the Fund over the life of the Fund for reimbursement of the Self-Sufficiency Costs. Any amounts that remain in the Fund after the Transition (*i.e.*, the difference between \$29 million and all funds spent, with binding approval, during the Transition) shall be paid equally to Amex, Nasdaq and NASD.

7.2 **Non-Fund Costs.** Costs to Nasdaq for the provision of the Nasdaq Technology to Amex shall not be reimbursable from the Fund ("Non-Fund Costs") and shall be paid to Nasdaq directly by Amex within thirty (30) days of receipt of an invoice. Such costs shall be calculated as Fully Loaded Costs.

7.3 **Price/Cost Information; Cost Reduction Strategies.** As part of their respective budget processes, Nasdaq will provide Amex annually the expected pricing for the Nasdaq Technology to be furnished pursuant to the terms of this Agreement for the upcoming budget year and each Party will provide to the other Parties its expected Self-Sufficiency Costs for the upcoming year. During the year, Nasdaq will notify Amex as promptly as reasonably possible should Nasdaq discover that the actual pricing for the Nasdaq Technology will be materially different than the estimate previously submitted and each Party will notify the other Parties as promptly as reasonably possible after a Party discovers that its actual Self-Sufficiency Costs will be materially

different than the estimate previously submitted. The Parties will also review the feasibility of establishing specific cost reduction and limitation objectives annually

## **SECTION 8. REPRESENTATIONS AND WARRANTIES.**

8.1 **Representations and Warranties of the Parties.** Each Party's representations and warranties to the other are as set forth in Article 11 of the Master Agreement. In addition, each Party represents and warrants that it has not used any other Party's data, information, Software or Documentation for any other purpose than the one for which the data, information, Software or Documentation was provided.

8.2 **Exclusion of Implied Warranties.** These warranties and the warranties set forth in Article 11 of the Master Agreement are exclusive and expressly in lieu of all other warranties, and each Party explicitly disclaims all other warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose.

**SECTION 9. CONFIDENTIAL INFORMATION.** The Parties' confidentiality obligations shall be as set forth in Article 4 of the Master Agreement but, notwithstanding

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anything otherwise set forth therein, those confidentiality provisions shall supersede the Confidentiality and Non-Disclosure Agreement dated June 22, 2001 and previously executed between Nasdaq and Amex.

**SECTION 10. TERM.** The term of this Agreement shall commence on the Agreement Date and shall continue as set forth in Article 6 of the Master Agreement.

## **SECTION 11. INDEMNIFICATION**

11.1 **Mutual Indemnity.** The Parties' indemnification obligations shall be as set forth in Article 3 of the Master Agreement.

11.2 **Infringement of Intellectual Property Rights.** In the event that Amex's use of the Nasdaq Technology under this Agreement is or Nasdaq determines is likely to be enjoined due to a claim covered by the indemnity obligations set forth in this Section, Nasdaq may, at its expense and at its sole discretion, either: (i) procure for Amex the right to use the enjoined Nasdaq Technology; or (ii) replace or modify the infringing portion of the Nasdaq Technology with a non-infringing equivalent substitute provided, however, that, if none of the above two options are reasonably available after commercially reasonable efforts by Nasdaq to accomplish the same, Nasdaq may, upon thirty (30) days notice, terminate the license and all related rights and responsibilities in connection with the infringing portion of the Nasdaq Technology.

11.3 **Extent of Liability.** If the use of any component of the Nasdaq Technology by Amex is enjoined due to a claim covered by the indemnity obligations set forth in Article 3 of the Master Agreement or Nasdaq terminates Amex's right to use that component under **Section 11.2**, if Nasdaq knew of the claim or the likelihood of such a claim as of the Agreement Date, Nasdaq shall pay to Amex an amount equal to the fair market value of the component whose use is enjoined.

**SECTION 12. DISPUTE RESOLUTION.** The Parties' dispute resolution agreement obligations shall be as set forth in the Master Agreement, except that: (i) Disputes regarding whether a proposed enhancement is needed for the regulation of the Amex market shall be resolved by a panel composed of Michael Ryan, Ed Knight and the Special Technology Consultant; the decision of such panel to be final and binding; and (ii) Nasdaq and Amex shall have no obligation to follow the Dispute resolution procedures set out in the Master Agreement with respect to a claim that the Amex Replacement System described in **Section 1.1(b)** infringes Nasdaq's patent rights beyond the scope of Nasdaq's agreement not to sue for such infringement.

**SECTION 13. LITIGATION.** A Party shall give prompt written notice to the other Parties if it knows of any pending or threatened actions, suits or proceedings or of facts which would lead a reasonable person to believe that it would give rise to such threats, with respect to the notifying Party that have, or are reasonably likely to have: (i) a material and adverse affect on the Transition or on the rights or remedies of either of the other Parties or on the ability of the notifying Party to perform its obligations hereunder; or (ii) a Material Adverse Effect. The existence of any of the above may be treated as a Dispute by the other Party.

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**SECTION 14. MISCELLANEOUS MATTERS.** The Parties will be subject to Article 14, Miscellaneous, of the Master Agreement.

**SECTION 15. DEFINITIONS.** To the extent a defined term is used in this Agreement and the definition is not set forth herein, the definitions in Article 1, Definition and Construction, of the Master Agreement shall be applicable.

"Change of Control" of Amex shall mean (i) Amex selling substantially all of its Assets, (ii) a Person acquiring Control of Amex after Amex's spin-off from the NASD Family, or (iii) Amex undergoing a merger, being acquired or undertaking an acquisition or being involved in a substantially similar transaction. Amex's spin-off from the NASD Family will not be considered a Change of Control.

"Critical Milestone Dates" shall have the meaning provided in **Section 3.2**.

"Day" means a calendar day.

"Derivative Work" shall have the meaning specified in 17 U.S.C. § 101.

"Documentation" shall mean all written material related to the referenced Software or System to the extent that the material permits a Party to use the Software or System in the manner permitted in this Agreement.

“Fully-Loaded Costs” shall mean (a) direct costs (for example, cost of obtaining required hardware and software; cost of employees including, but, not limited to, benefits, salary, recruiting; cost of consultants; travel, meetings, training; any applicable taxes; and other direct cost categories included as permitted under this Agreement), and (b) administrative overhead of \*\*\*\*\* % based on (a) direct costs. It is the intention of the Parties that the Fully-Loaded Costs and the Self-Sufficiency Costs include similar cost categories, regardless of whether the same categories are specifically referenced in Exhibits B or C or in the definition of Fully-Loaded Costs. For illustration purposes, attached hereto and incorporated herein as Exhibit C, is a list of categories comprising Nasdaq’s Fully Loaded Costs for its ISS and MDS Systems.

“Intellectual Property” shall mean domestic and foreign patents, patent applications, registered and unregistered trade marks and service marks, registered and unregistered copyrights, trade names, computer programs, data bases, trade secrets, proprietary information and include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that permits a person, independently of contract, to control or preclude another person’s use of the information on the basis of the rights holder’s interest in the information.

\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

“Milestone Dates” shall have the meaning provided in **Section 3.2**.

“Nasdaq Technology” shall have the meaning provided in **Section 1.1**.

“Nasdaq Family” shall mean Nasdaq and its Affiliates, collectively.

“NASD Family” shall mean NASD and its Affiliates, collectively.

“Parties” shall have the meaning provided in the first paragraph hereof.

“Person” shall mean a natural person, corporation, partnership, limited liability company, association or other governmental or non-governmental entity.

“SEC” shall have the meaning provided in the first paragraph hereof.

“Software” shall mean the set of programs (object, and if so noted in the Agreement, source programs) to be provided hereunder.

“Technology Steering Committee” shall have the meaning provided in **Section 2.1**.

“Transition Plan” shall have the meaning provided in **Section 3.1**.

IN WITNESS WHEREOF, the Parties agree to be bound by the foregoing.

The American Stock Exchange, LLC

By: /s/ Salvatore F. Sodano

Name: Salvatore F. Sodano

Title: CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Authorized Officer

Date: 1/31/02

The Nasdaq Stock Market, Inc.

By: /s/ Richard G. Ketchum

Name: Richard G. Ketchum

Title: President

Authorized Officer

Date: 1/31/02

National Association of Securities Dealers, Inc.

By: /s/ Robert R. Glauber

Name: Robert R. Glauber

Title: Chairman and Chief Executive Officer

Authorized Officer

Date: 2/11/02

**Exhibit A**

**Anyone with knowledge of the design of ISS System (Concept through Implementation phases)**

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Exhibit B

SELF SUFFICIENCY COSTS

Permitted Direct Self-Sufficiency Costs:

1. *Staff / Consultants* - Benefits, salaries, recruiting expenses, and other costs of the full time employees or consultant equivalents required to either build replacement systems or separate Amex from Nasdaq Technology, pursuant to the Agreement (i.e. separating Amex in the case of Siebel or building the new data warehouse) (based on the percentage of time that they work on the building or separation). This will generally cover software development efforts, including installing cabling, configuration work, and similar efforts (but not on-going operations support) and QC support required to transition the new systems. This includes Amex, and Nasdaq to the extent Nasdaq is supporting Amex in building the new systems or in separating from Nasdaq Technology.
2. *Premises* – Temporary space (reasonably necessary at a cost of no more than Amex’s average occupancy rate at 65 Broadway, New York, New York, unless Amex obtains the prior approval of the Special Technology Consultant for such higher cost), supplies, postage, provisioning, and any other operating expenses for the staff/consultants referenced in Section 1 above (based on the percentage of time that they work on building new systems or separating Amex from Nasdaq). This includes both Amex and Nasdaq to the extent Nasdaq is supporting Amex in building the new systems or in separating from Nasdaq Technology .
3. *Network / Communications* – Purchase and installation (not ongoing costs) of new network and communications infrastructures and lines required to establish links between the respective new systems and/or web sites. This includes Amex and Nasdaq to the extent Nasdaq is supporting Amex in separating from Nasdaq Technology.
4. *Hardware* -Capital costs associated with first time hardware purchases for development/QA/training/production. Costs related to capacity growth, both organic and new, are not permitted and depreciation for these hardware purchases cannot be charged in addition to the capital costs. It is expected that there will be some consulting support required for the hardware installations. This includes Amex and Nasdaq to the extent Nasdaq is supporting Amex in separating from Nasdaq Technology.
5. *Travel & Training* - All associated with the implementation of the new systems, for both Nasdaq and Amex

Permitted Indirect Self-Sufficiency Costs:

1. *Management Overhead* - Project Management for the specific project implementations ie. Siebel, MDS, ISS, .COMS at a rate of \*\*\*\*\* of Permitted Direct Self-Sufficiency Costs, with

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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the exception of capital costs where the \*\*\*\*\* will only be on the amount depreciated by a Party in that year.

2. *Outside Legal Expenses*: Outside legal expenses associated with contract reviews for new vendors (hardware, software and contractors) of Amex and of Nasdaq to the extent Nasdaq is supporting Amex in separating from Nasdaq Technology. The Parties anticipate that such expenses will only be reimbursable from the Fund in extraordinary circumstances where the subject matter of the contract (or part thereof) is outside the reasonable expertise of the applicable Party’s in-house legal department and the reimbursement of such costs must be pre-approved by the TSC Co-Chairs.

**The Permitted Costs listed above are the costs to be reimbursed from the Fund. Below are examples of things not chargeable against the Fund:**

**Non-Permitted Costs:**

- Base operating, maintenance or enhancement costs for Nasdaq Technology provided by Nasdaq
- The Special Technology Consultant
- Transaction PMO function (\*\*\*\*\*)

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\***\*\*\*\*** Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

Exhibit C

**ISS & MDS**

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\***\*\*\*\*** Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

**SECOND AMENDMENT TO  
EWN II AGREEMENT**

**THIS SECOND AMENDMENT TO EWN II AGREEMENT** (hereinafter referred to as the "Amendment") by and between MCI WORLDCOM Communications, Inc. ("WorldCom") and The Nasdaq Stock Market, Inc. ("Nasdaq"), is binding when signed by Nasdaq, provided it is subsequently accepted by WorldCom. The rates, charges, discounts and commitments set forth herein are effective no later than June 1, 2002 ("Second Amendment Effective Date").

**WITNESSETH:**

WHEREAS, heretofore, Nasdaq and WorldCom's predecessor in interest entered into that certain EWN II Agreement dated as of November 19, 1997, as amended by that certain First Amendment to EWN II Agreement signed by Nasdaq on January 5, 2001 (the "Agreement"), with respect to certain services to be provided to Nasdaq by WorldCom, as more particularly described therein; and

WHEREAS, Nasdaq and WorldCom wish to amend the Agreement as set forth herein;

NOW, THEREFORE, in consideration of the premises, the terms and conditions stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** All capitalized terms used herein and not expressly defined herein shall have the respective meanings given to such terms in the Agreement. All references in the Agreement to the defined term "MCI" shall be deemed amended to read "WorldCom" and refer to MCI WORLDCOM Communications, Inc.
2. **Removal of Achievement Credits.** The Agreement is hereby amended in Section 3.1 by deleting the second and third sentences therein in their entirety.
3. **Revenue Commitment.** The Agreement is amended in Section 3.3 by deleting the existing provision in its entirety and inserting the following in lieu thereof:

"3.3. Revenue Commitment. The minimum revenue commitment under this Agreement shall be \*\*\*\*\*, net of all applicable federal, state and local taxes that Nasdaq agrees to pay in Section 3.4 (said amount shall hereinafter be referred to as the "Revenue Commitment"), calculated using all charges incurred for WorldCom Services based on \*\*\*\*\* (as \*\*\*\*\* may be amended from time to time by mutual agreement).

In the event that Nasdaq fails to satisfy the Revenue Commitment by May 31, 2002 (commencing with charges incurred as of the Effective Date and ending with charges incurred as of May 31, 2002), or in the event Nasdaq terminates the Agreement on or prior to May 31, 2002, for reasons other than material breach by WorldCom, or in the event WorldCom terminates this Agreement prior to May 31, 2002, due to material breach by Nasdaq, then Nasdaq shall pay WorldCom (a) an amount (which both parties agree is reasonable) equal to the difference between: (i) the aggregate charges incurred from the Effective Date to the termination

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date and (ii) the Revenue Commitment ("Shortfall Amount"). WorldCom will credit toward such Revenue Commitment any amounts incurred by Nasdaq during such initial term and subsequently paid in accordance with this Agreement. If this Agreement is terminated and there follows such termination a De-Installation Plan period as described in Section 29.3, then Nasdaq shall be entitled to receive credit toward achievement of the Revenue Commitment any amounts incurred and subsequently paid in connection with such De-installation Plan period referred to in Section 29.3. Any Shortfall Amount paid by Nasdaq shall be credited against charges incurred by Nasdaq in connection with a De-Installation Plan period.

Nasdaq may terminate the Agreement prior to the end of the initial term (as described in Section 29.1 below) (a) for convenience or (b) for reasons other than (1) material breach by WorldCom or (2) as otherwise permitted in the Agreement for Nasdaq to terminate without liability, or WorldCom may terminate this Agreement due to material breach by Nasdaq, provided that upon such termination by either party, in addition to any Shortfall Amount described above, Nasdaq shall pay WorldCom an amount (which both parties agree is reasonable) equal to the aggregate sum of: (i) each fixed monthly recurring charge specified in Attachment 3 multiplied by (ii) the number of calendar months (prorated for partial months) remaining in the Contract Period (as described in Attachment 3) that corresponds to each fixed monthly charge on the date of termination ("Early Termination Charge")." Notwithstanding the preceding, Nasdaq shall not be liable for any Early Termination Charge where the Agreement provides that it may be terminated without Nasdaq incurring any further liability.

4. **Technology Rereview.** The Agreement is amended in Section 8.2 by inserting the following new sentence to the end thereof: "The rights and obligations set forth in this Section 8.2 are intended to represent general day-to-day obligations of the parties, and are not intended to be construed as requiring the same type of obligations as set forth in Section 8.3 below."

The Agreement is further amended by adding a new Section 8.3 to read as follows:

"8.3 If at any time before \*\*\*\*\*, Nasdaq provides WorldCom with a comprehensive document that sets forth Nasdaq's specific requirements for the Network (or network services in replacement thereof), as well as any technologies or concepts that Nasdaq desires for WorldCom to review in connection therewith, then no later than \*\*\*\*\*, WorldCom shall deliver to Nasdaq a written proposal that responds to Nasdaq's requirements and describes any significant new or improved physical (i.e., hardware or software) technologies (collectively, "New Technology") then generally available in the marketplace that WorldCom believes would materially improve upon the functional and/or financial performance of the WorldCom Service to Nasdaq taking into consideration the geographic scope of the Network, the breadth of the services provided, and the cost of acquiring the new technology. WorldCom's proposal will also address any technologies or concepts Nasdaq requested to be reviewed. No later than \*\*\*\*\* after receipt of WorldCom's proposal, Nasdaq shall provide a written response to WorldCom that either (a) accepts the WorldCom proposal, or (b) rejects

all or a portion of the WorldCom proposal in good faith for reasons that are specifically set forth in its rejection notice, which reasons may include, without limitation, solely pricing concerns. If Nasdaq rejects WorldCom's proposal in whole or in part, WorldCom shall deliver to Nasdaq a second proposal no later than \*\*\*\* after WorldCom's receipt of Nasdaq's written rejection. Thereafter, the parties shall arrange to promptly meet to discuss their stated positions and attempt to resolve any outstanding differences. The parties shall seek in good faith to reach agreement by \*\*\*\*, as to all issues, including without limitation (a) the applicability of any New Technology to the WorldCom Service as

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\* \*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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contemplated in this paragraph, (b) adjustments to Nasdaq's rates and charges hereunder in order to implement New Technology, if any, and (c) the schedule for implementing New Technology, if any. If Nasdaq accepts WorldCom's proposal or the parties reach agreement regarding New Technology, the parties shall promptly enter into an appropriate amendment to the Agreement and any new or adjusted pricing would be effective \*\*\*\*. If the parties are unable to reach agreement by \*\*\*\*, then Nasdaq may provide WorldCom with written notice no later than \*\*\*\*, that Nasdaq elects to terminate the Agreement effective \*\*\*\*. Termination of the Agreement by Nasdaq as permitted under this paragraph would be without liability for early termination charges set forth in Section 3.3 of this Agreement, however the provisions of Section 18.4 below shall not apply to such a termination by Nasdaq. If the parties agree that there is no New Technology, the Agreement shall continue in full force and effect in accordance with its terms."

5. Installation Schedule. The Agreement is amended in Section 9.2 by deleting the provision in its entirety and inserting the following in lieu thereof:

"The parties will agree on a schedule ending 18 months from the Effective Date that includes the milestones in Attachment 7 and all Installations for Subscribers on EWN and which is subject to change by mutual agreement of the parties (*Installation Schedule*). WORLDCOM will use its Best Efforts to meet the Installation Schedule in 18 months. For 20 months from the Effective Date, the remedies under Attachment 7 do not apply to any Installation. After the end of the 20th month following the Effective Date, WORLDCOM shall be subject to the remedies in Attachment 7 with respect to all Installations. The application of remedies in accordance with this Section shall be subject to Section 20.2."

6. Staffing Levels. The Agreement is amended in Section 14.4 by amending the first sentence therein to read as follows:

"WorldCom will maintain the number of dedicated professional personnel, and the professional grade levels of such personnel, supporting Nasdaq, including, but not limited to, NCC and operations personnel, engineering resources, and account team personnel (performing technical consultation services, sales/business services and customer consultation support services) at the number and professional grade levels as of Nasdaq's execution of this Agreement. WorldCom will not reduce the number or the professional grade levels of such personnel supporting Nasdaq without Nasdaq's prior written approval which will not be unreasonably withheld or delayed. WorldCom's obligations under the preceding two sentences will not be construed to (a) limit WorldCom's ability to terminate any such personnel for cause (provided that "cause" shall not mean reductions in force or similar cost-cutting practices) in accordance with company policies, provided WorldCom uses its reasonable efforts to promptly find a suitable replacement for such employee, or (b) place WorldCom in default under this paragraph as a result of staffing vacancies arising from voluntary employee action (e.g., resignations) or promotion, provided that WorldCom uses its reasonable efforts to promptly find a suitable replacement for such employee. No more than once per quarter, upon Nasdaq's written request, WorldCom will provide Nasdaq with a report detailing the WorldCom personnel assigned to Nasdaq and their professional grade levels (i.e., titles); WorldCom's failure to deliver such a report will not be deemed a breach of a material obligation by WorldCom under the Agreement provided that WorldCom is otherwise in actual compliance with its staffing obligations under the preceding sentences of this Section 14.4. Nothing in this paragraph will be deemed to limit WorldCom's obligations under Section 14.6 below."

7. Notices. The Agreement is amended in Section 16.1 by deleting the contact address for WorldCom and inserting the following in lieu thereof:

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"Name: \*\*\*\*  
Title: \*\*\*\*  
Address: 5 International Drive  
Rye Brook, NY 10573  
Telephone: \*\*\*\*

The Agreement is amended in Section 16.1 by deleting the contact address for Nasdaq and inserting the following in lieu thereof:

"Name: \*\*\*\*  
Title: \*\*\*\*  
Address: 80 Merritt Boulevard  
Trumbull, CT 06611  
Telephone: \*\*\*\*

The Agreement is further amended in Section 16.2 by deleting the contact information for "MCI" and inserting the following in lieu thereof:

"For WorldCom:  
MCI WORLDCOM Communications, Inc.  
Law and Public Policy – Business Transactions  
5 International Drive  
Rye Brook, New York 10573"

8. Warranties; Exclusivity; Right of First Refusal. The Agreement is amended in Section 18.4 by deleting the first sentence in its entirety and inserting the following in lieu thereof:

“18.4. In the event that this Agreement is terminated either for cause or as otherwise permitted in this Agreement (except in the case of termination by Nasdaq pursuant to Section 8.3 above) or upon expiration of the term hereof, Nasdaq may provide WorldCom Notice that it intends to license, lease, purchase or otherwise obtain an assignment of all or any portion of the Separable Components.”

The Agreement is also amended in Section 18.4 by adding the following sentence to the end of Section 18.4:

“The provisions of this paragraph shall also apply to and survive any rejection, termination or expiration of this Agreement by WorldCom (or its successors or assigns) in a proceeding under any chapter of the United States Bankruptcy Code or any other state or federal liquidation, insolvency, receivership or financial restructuring proceeding.”

The Agreement is amended in Section 18.7 by deleting the existing clause (iii) in its entirety and inserting the following in lieu thereof:

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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“(iii) that the person executing this Agreement on behalf of Nasdaq has been given the authority to bind Nasdaq and the Agreement constitutes or will constitute a legally binding and enforceable obligation of Nasdaq, except as such enforceability may be limited, unless otherwise provided, by provisions of applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar law affecting creditor’s rights and remedies generally or by general principles of equity;”

The Agreement is amended in Section 18.8 by deleting the existing clause (iii) in its entirety and inserting the following in lieu thereof:

“(iii) that the person executing this Agreement on behalf of WorldCom has been given the authority to bind WorldCom and the Agreement constitutes or will constitute a legally binding and enforceable obligation of WorldCom, except as such enforceability may be limited, unless otherwise provided, by provisions of applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar law affecting creditor’s rights and remedies generally or by general principles of equity;”

The Agreement is amended by adding a new Section 18.9 to read as follows:

“18.9 Nasdaq warrants to WorldCom that during the term of this Agreement, but in no event beyond May 31, 2005 (unless the parties specifically agree otherwise):

- (a) Nasdaq shall obtain all of its EWN Services solely and exclusively from WorldCom. As used herein, “EWN Services” means those network transmission, network management, network maintenance, network monitoring services, and customer premises equipment required by Nasdaq for, and associated with either: (i) the operation of the enterprise wide network described in this Agreement but only between, and including, the switches at each of the Nasdaq data centers and each Subscriber’s premises (and not including any components or services affecting only the Nasdaq or Subscriber side of such switches), or (ii) the functionality associated with SDP’s (as defined in Attachment 3) as of the date of Nasdaq’s execution of the Second Amendment to the Agreement. Each party agrees to negotiate in good faith the pricing for any new or additional EWN Services. The provisions of the Section 18.9(a) do not survive the completion of performance or the rejection, termination or expiration of this Agreement.
- (b) As long as WorldCom is not in breach of any of its material obligations under the Agreement, Nasdaq shall give WorldCom the right to meet or improve upon the lowest bona fide third party offer (including pricing and material terms and conditions) for the supply of any network transmission, network management, network and equipment maintenance, network monitoring services, and/or customer premises equipment other than EWN Services that is extended to Nasdaq or to any entity that is acquired by Nasdaq. WorldCom shall have at least, but no more than, ten (10) business days following its receipt of a written description of the best such third party offer(s) in which to provide Nasdaq or the subject entity with WorldCom’s proposal for the subject services. However, to the extent Nasdaq is subject to nondisclosure obligations that prohibit disclosure to WorldCom of any particular third party offer, then Nasdaq shall instead provide WorldCom with a written description of Nasdaq’s requirements for the subject services and/or products, including without limitation, pricing. If Nasdaq determines in its reasonable and good faith discretion WorldCom’s proposal is equal or superior to the best third party offer(s) in all material respects and Nasdaq or the affected entity intends to purchase the subject products and/or services, then Nasdaq shall award, or shall cause the affected entity to award, the subject services to WorldCom whereupon the parties shall negotiate in good faith a mutually acceptable contract. Nothing in this Section

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shall require Nasdaq or any entity acquired by Nasdaq to violate the terms (e.g., exclusivity covenants) of any pre-existing written agreement between any such entity and a third party vendor, provided that neither Nasdaq nor any acquired entity shall renew any such agreements beyond their existing service term unless and until WorldCom has been presented with the opportunity to bid for the subject services as contemplated herein and failed to be awarded the business. Subject to any applicable non-disclosure obligations applicable to Nasdaq or the affected entity, Nasdaq will provide WorldCom upon request with reasonable information relating to any such pre-existing contractual obligation. The provisions of the Section 18.9(b) do not survive the completion of performance or the termination, rejection or expiration of this Agreement.”

9. Regulatory Responsibilities. The Agreement is amended in Section 27.4 by deleting the second sentence in its entirety and inserting the following in lieu thereof:

“In the event a rule, regulation, or final decision of a court or regulatory body having jurisdiction over WorldCom has the effect of substantially prohibiting WorldCom from providing WorldCom Services, WorldCom may terminate this Agreement upon written Notice to Nasdaq without liability under the provisions of the *Termination* Section of this Agreement, but subject to the provisions of Section 18.4 and 29.3.”

10. Tariff. The Agreement is amended in Section 28.2 by deleting the second sentence in its entirety and inserting the following in lieu thereof:

“If WorldCom attempts to enforce against the Corporations or a Subscriber the term of any tariff which is inconsistent with this Agreement (including, but not limited to, terms affecting pricing or performance) and adversely affects the Corporations or a Subscriber, their use of WorldCom Service, or WorldCom’s performance of its obligations, or warranties or representations, then Nasdaq can terminate this Agreement in accordance with Section 29.2, including reasonable efforts acceptable to both parties to amend the applicable tariff to make its terms consistent with this Agreement.”

11. Term and Termination. The Agreement is amended in Section 29.1 through 29.4 by deleting the existing provisions in their entirety and inserting the following in lieu thereof:

“29.1 The initial term of this Agreement shall commence on the Effective Date and expire on May 31, 2005, unless rejected, terminated or canceled earlier by either party in accordance with the provisions hereof, including without limitation a termination by Nasdaq pursuant to Section 8.3 above.

29.2. Termination for Cause. In the event Nasdaq or WorldCom breaches a material obligation under this Agreement, the other party may terminate the Agreement (a) upon 60 days Notice, or (b) upon less than 60 days Notice if approved by a court of competent jurisdiction or if otherwise consented to by the breaching party, or (c) immediately upon Notice to the breaching party upon the occurrence of section (ii) or (v) of the fourth sentence of this paragraph. The party receiving the Notice shall have 60 days from the receipt of such Notice to cure the stated breach, except where this Agreement expressly provides for an alternate cure period or such shorter period as determined by a Court of competent jurisdiction. If the party has not cured the breach within the applicable cure period, the termination shall be automatically effective in the case of termination under clause (c) above, and in the case of clauses (a) or (b) above, effective upon a final Notice of termination being given to the breaching party. The parties agree that each of the following events, by way of example and not limitation, shall constitute a material breach and cause for termination of Agreement “with cause:” (i) Nasdaq’s failure to pay or to secure payment of WorldCom charges in accordance with its rights and obligations under Section 3.2; (ii) if either party becomes insolvent, makes an assignment for

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the benefit of creditors, files a voluntary petition or has an involuntary petition filed or action commenced against it under the United States Bankruptcy Code, or any similar federal or state law, becomes the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations; (iii) if WorldCom breaches a material obligation under this Agreement or under any material agreement with a third party that has an adverse affect on Nasdaq’s rights and obligations under this Agreement (and fails to cure such breach in accordance with the terms of such agreement) which is reasonably required in order for WorldCom to meet its obligations hereunder; or (iv) if either party assigns this Agreement in violation of the provisions of Section 32; or (v) WorldCom’s failure to satisfy any of the “Critical Performance SLAs” set forth in Attachment 7 hereto. Additionally, if WorldCom rejects this Agreement in accordance with Section 365 of the United States Bankruptcy Code, as may be amended, or any similar federal or state law, then Nasdaq may exercise the rights set forth in this Section 29.2 without notice and terminate this Agreement without liability.”

29.3 Except for a termination for Nasdaq’s breach of Section 3.2(iv), within 60 days of the date of the termination (either for cause or as otherwise permitted in this Agreement), or cancellation Notice of this Agreement, the parties shall agree on a plan (the “De-installation Plan”), which shall include Regional de-installation, and continuation of other obligations—including network management—for a period of eighteen (18) months after the end of the last term, and which shall take into account changes in the Specifications which may reasonably be expected to be appropriate as the WorldCom Services are discontinued pursuant to such plan. If the parties have not reached agreement on a De-installation Plan within this 60-day period, either party may initiate arbitration procedures. Unless otherwise agreed by the parties, the arbitrator(s) shall hear the matter and produce a De-installation Plan within 60 days of the arbitration. The provisions of this paragraph shall also apply to and survive any rejection, termination or expiration of this Agreement by WorldCom (or its successors or assigns) in a proceeding under any chapter of the United States Bankruptcy Code or any other state or federal liquidation, insolvency, receivership or financial restructuring proceeding.”

29.4 [Intentionally Omitted]”

12. Survival. The Agreement is amended in Section 37 by deleting the existing provision in its entirety and inserting the following in lieu thereof:

“Section 37. *Survival of Provisions.* The obligations of the Payment, Confidentiality, Use of Nasdaq/WorldCom name and Marks, Indemnification, Limitation of Liability, Arbitration sections of this Agreement, any warranties, and any other provisions which by their nature or as otherwise set forth in the Agreement are intended to survive shall survive the completion of performance, expiration or any termination or rejection, of the Agreement, including in a proceeding under any chapter of the United States Bankruptcy Code or any other state or federal liquidation, insolvency, receivership or financial restructuring proceeding.”

13. Revised Pricing. Notwithstanding any other provision herein, effective June 1, 2002, the Agreement is amended in Attachment 3 by deleting such Attachment in its entirety and replacing it with a new Attachment 3 in the form attached hereto and incorporated herein by this reference.

14. Acceptance Test. The Agreement is amended in Attachment 6 by deleting the reference therein to “\*\*\*\*” Acceptance Test” and inserting “\*\*\*\* Acceptance Test” in lieu thereof.

15. Critical Performance SLAs. The Agreement is amended in Attachment 7 by adding the following to the end thereof:

“Critical Performance SLAs

Upon the occurrence of any of the following events (each of which is a “Critical Performance SLA”), Nasdaq may terminate the Agreement for cause pursuant to Section 29.2(c) of the Agreement provided it sends termination notice within \*\*\*\* following Nasdaq’s receipt of WorldCom’s monthly Network SLA report (as defined below):

- (a) *Network Availability* – If Network Availability (with backup) fails to equal or exceed \*\*\*\* during the PPM, measured on a calendar month basis, for \*\*\*\* consecutive calendar months. This is measured from the LAN at the Data Center to the Router port at the Customer premise.
- (b) *Chronic Availability Problems* – If Network Availability (with backup) fails to equal or exceed \*\*\*\* more than \*\*\*\* times in any rolling \*\*\*\* month period. This is measured from the LAN at the Data Center to the Router port at the Customer premise.
- (c) *Catastrophic Outages* - If, in any \*\*\*\* month rolling period, there occurs \*\*\*\* or more Catastrophic Outages (as defined below), one of which has a duration exceeding \*\*\*\* and the other of which exceeds \*\*\*\*. A “Catastrophic Outage” for purposes of this provision is defined as any Network outage that prevents broadcast, multicast and /or IP transmission such that \*\*\*\* or more of the Service Configurations are out of service.

Measurement of WorldCom’s compliance with the Critical Performance SLAs shall be in accordance with this Attachment 7 and the Agreement, except as expressly modified in this subsection. The Critical Performance SLAs do not limit any performance credits for which Nasdaq would otherwise qualify under Attachment 7. None of the following events shall be included in the determination of WorldCom’s compliance with any of the Critical Performance SLAs:

- (i) Any force majeure events as described in Section 44 of the Agreement (including without limitation, to the extent caused by any acts or omissions on the part of Nasdaq, its affiliates, or any of their third party contractors, subcontractors or agents [other than WorldCom’s contractors, subcontractors, or agents]; governmental regulation, national emergency, acts of terrorism).
- (ii) Scheduled maintenance on the Network.

Monthly Network SLA Report.

By the \*\*\*\* Business Day of each calendar month, WorldCom will provide Nasdaq with a monthly report describing Network performance during the preceding calendar month. WorldCom’s failure to deliver such a report will not be deemed a breach of a material obligation by WorldCom under the Agreement provided that WorldCom is otherwise in actual compliance with the Network performance obligations under this Attachment 7.”

16. Attachment 11. The Agreement is amended by deleting the existing Attachment 11 and Appendix F therein and inserting a new Attachment 11 and Appendix F in the form attached hereto and incorporated by reference.

17. Attachment 13. The Agreement is amended in Attachment 13 as follows:

- “(a) deleting the reference to \*\*\*\* “ and inserting \*\*\*\* in lieu thereof;
- (b) deleting the reference to \*\*\*\* and inserting \*\*\*\*;
- (c) deleting the reference to \*\*\*\* and inserting \*\*\*\* in lieu thereof;
- (d) deleting the reference to \*\*\*\* and inserting \*\*\*\* in lieu thereof;
- (e) deleting the reference to \*\*\*\* and inserting \*\*\*\* in lieu thereof; and
- (f) deleting the reference to \*\*\*\* and inserting \*\*\*\* in lieu thereof.”

18. SIAC Network Connections. The Agreement is amended by adding a new Attachment 14 in the form attached hereto and incorporated herein by this reference.

19. Network Architecture Diagram. The Agreement is amended by adding a new Attachment 15 in the form attached hereto and incorporated herein by this reference, which depicts the architecture of the Network upon implementation of the Second Amendment to the Agreement.

20. Termination of Letter Agreement. That certain letter agreement between the parties dated January 25, 2002, regarding the upgrade of the EWN II Network is hereby terminated and this Amendment is intended to embody the parties' agreement with respect to the Upgrade Services described therein in order to meet Nasdaq's April 2002 user acceptance testing objective.

21. Entire Agreement. Except as expressly modified by this Amendment, the Agreement shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations of Nasdaq and WorldCom. This Amendment, including the Agreement and the applicable tariffs of WorldCom and its affiliates, is the complete agreement of the parties and supersedes any prior agreements or representations, whether oral or written, with respect thereto.

\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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22. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the permitted successors and permitted assigns of the parties hereto.

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23. Acceptance Deadline. This Amendment, and the offer set forth herein, shall be void and the offer described herein withdrawn, if Nasdaq does not execute and deliver the Amendment to WorldCom by no later than **June 17, 2002**.

IN WITNESS WHEREOF, WorldCom and Nasdaq have caused this Amendment to be executed by their duly authorized representatives as of the dates set forth below.

**The Nasdaq Stock Market, Inc.**

**MCI WORLDCOM  
Communications, Inc.**

By: /s/ Steven Randich  
\_\_\_\_\_  
Name: Steven Randich  
\_\_\_\_\_  
Title: EVP & CIO  
Date: 6-17-02  
\_\_\_\_\_

By: /s/ John McGuire  
\_\_\_\_\_  
Jon McGuire  
Senior Vice President  
Date: 6-27-02  
\_\_\_\_\_

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### ATTACHMENT 3

#### PRICING AND SERVICES INTERVALS

##### I. MONTHLY RECURRING CHARGES.

A. Definitions. The following definitions shall apply for purposes of this Attachment 3:

“Classic” refers to those Service Configurations connected to an SDP that is located on the Subscriber's premises.

“Classic Dual T-1 Configuration” means \*\*\*\*\*.

“Classic Single T-1 Configuration” means \*\*\*\*\*.

“SDP” means \*\*\*\*\*.

“Service Configuration” means any of the following circuit and equipment configurations that may be ordered by Subscribers to access the Network: Classic Dual T-1 Configuration, Shared Dual T-1 Configuration, Shared Dual DS0 Configuration, Classic Single T-1 Configuration, Shared Single T-1 Configuration, Shared Single T-1 with ISDN Configuration, Shared Single DS0 Configuration, Shared Single DS0 with ISDN Configuration.

“Shared” refers to those Service Configurations that are connected to an SDP that is not located at the Subscriber's premises but resides in the network and multiple Subscribers communicate with the SDP to receive the Broadcast Feed data.

“Shared SDP Implementation Notice” means a written notice that Nasdaq may deliver one time to WorldCom requesting implementation of the “Variable Charges Applicable After Shared SDP Implementation” rate table set forth in Section I. B. below.

“Shared Dual DS0 Configuration” means \*\*\*\*.

“Shared Single DS-0 Configuration” means \*\*\*\*.

“Shared Single DS-0 w/ ISDN Configuration” means \*\*\*\*.

\* \*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

“Shared Dual T-1 Configuration” means two T-1 access circuits, two WAN Interface Card, and associated Router/Hub Port hardware and cabling, all of which receives networks monitoring and maintenance services hereunder and is connected to a Shared SDP.

“Shared Single T-1 Configuration” means one T-1 access circuit, one WAN Interface Card, and associated Router/Hub Port hardware and cabling, all of which receives networks monitoring and maintenance services hereunder and is connected to a Shared SDP.

“Shared Single T-1 with ISDN Configuration” means one T-1 access circuit, WAN Interface Card, 4 port ISDN BRI, and associated Router/Hub Port hardware and cabling, all of which receives network monitoring and maintenance services hereunder and is connected to a Shared SDP.

**B. Charges.** WorldCom will bill Nasdaq for the Services on a monthly basis. Subject to the provisions of section I.C. below, the monthly recurring charge for the Services will be as specified in the table below, depending upon the corresponding contract period. Beginning January 1, 2003, the fixed monthly charge will be subject to adjustment upwards each monthly billing period by an amount equal to the aggregate sum of the product of (a) the total number of configurations, calculated for each type of Service Configuration, installed on the Network on the last day of the applicable billing monthly period, multiplied by (b) the applicable “Variable Charge” corresponding to such Service Configuration as specified in the applicable table below. The Table I Variable Charges (*Variable Charges Applicable Prior to Shared SDP Implementation*) shall apply unless and until the implementation of the Table II Variable Charges (*Variable Charges Applicable After Shared SDP Implementation*) following WorldCom’s receipt of a Shared SDP Implementation Notice. Any adjusted monthly charge derived through the above formula for any given monthly billing period will not be carried forward to the subsequent monthly billing period; calculation of any adjustment to the fixed monthly charge will be based off of the applicable fixed monthly charge amount specified in the table below.

| <u>Contract Period</u>  | <u>Fixed Monthly Charge</u> | <u>Variable Charges</u>              |
|-------------------------|-----------------------------|--------------------------------------|
| 6/1/ 2002 – 12/ 31/2002 | See Formula Below*          | None Apply                           |
| 1/1/2003 – 12/31/2003   | ****                        | See Tables of Variable Charges below |
| 1/1/2004 – 12/31/2004   | ****                        | See Tables of Variable Charges below |
| 1/1/2005 – 5/31/2005    | ****                        | See Tables of Variable Charges below |

\* The fixed monthly charge for this seven month period will be an amount equal to: \*\*\*\*\*. The parties will enter into an amendment to the Agreement to document this figure once determined.

\*\*Subject to upward adjustment based on the Variable Charges, pursuant to the formula described in the above paragraph and the tables of Variable Charges below.

**TABLES OF VARIABLE CHARGES**

**Table I. Variable Charges Applicable Prior to Shared SDP Implementation Date**

| <u>Service Configuration</u>      | <u>Monthly Variable Charge per Service Configuration</u> |
|-----------------------------------|--|
| Dual T-1 Service Configurations   | ****   |
| Single T-1 Service Configurations | ****   |

**Table II. Variable Charges Applicable After Shared SDP Implementation**

| <u>Service Configuration</u> | <u>Monthly Variable Charge per Service Configuration</u> |
|------------------------------|--|
| Classic Dual T-1             | ****   |
| Classic Single T-1           | ****   |
| Shared Dual T-1              | ****   |
| Shared Dual DS0              | ****   |

|                          |      |
|--------------------------|------|
| Shared Single T-1        | **** |
| Shared Single T-1 w/ISDN | **** |
| Shared Single DS0        | **** |
| Shared Single DSO w/ISDN | **** |

Notes to Tables:

(a) The charges in Table II above will be effective commencing on the first day of the second full monthly billing cycle after WorldCom's receipt of the Shared SDP Implementation Notice.

\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

(b) Commencing January 1, 2003, any Dual T-1 or Single T-1 Service Configuration that is connected to more than 18 SDPs will be charged by WorldCom as separate Service Configurations, pending installation of a physically separate Service Configuration. The number of separate Service Configurations that will be charged will be: the total number of connected SDPs on the configuration, divided by 18 and rounded to the next highest whole number (e.g., 37 SDPs divided by 18 = 2.055 rounded up to 3 Service Configurations).

(c) Only Subscriber sites with 3 or fewer presentation devices (PDs) and no non-display application programming interfaces (APIs) are eligible for conversion to a Shared SDP Service Configuration.

(d) If WorldCom installs a Service Configuration and, due to delay of Subscriber (e.g., failure to extend its demarc) continuing for 30 days after such installation, WorldCom is prevented from placing the Service Configuration in operation, WorldCom may begin billing Nasdaq as if the Service Configuration were operating.

**C. Bandwidth Parameter.** The pricing in Section I.B. above is valid for broadcast circuits (i.e., the primary and secondary circuits carrying outgoing broadcast feeds from Nasdaq's data centers) with bandwidth of up to \*\*\*\*\* each; WorldCom will increase such bandwidth as necessary to meet Nasdaq's requirements under Attachment 11 – Appendix F. The \*\*\*\*\* capacity referenced above is predicated on Nasdaq's completion of Broadcast Reduction Phase 2 (i.e., increasing the maximum number of SDPs per T1 pair from the current 6 up to 18 SDPs). Should Nasdaq require more than \*\*\*\*\* in bandwidth per primary and secondary circuit, the parties will negotiate promptly in good faith reasonable adjustments to the above pricing. Out of each of the \*\*\*\*\* bandwidths described above, up to 176 kbps (i.e., 8 kbps per SDP times 22 SDPs) per Subscriber T-1 pair is available for query/response ("Q/R") traffic (i.e., traffic in the form of queries originating from Subscriber workstations and terminating at Nasdaq data centers, and the responses thereto) provided that the Q/R traffic for any SDP does not exceed 8 kbps per SDP.

**D. \*\*\*\*\* Connection.** In addition to the charges in Section I.B above, WorldCom will bill Nasdaq for the \*\*\*\*\* Network connection described in Attachment 14 at \*\*\*\*\* per month commencing from March 22, 2002. The standard non-recurring provisioning charges described in Section II below shall apply to \*\*\*\*\* connections.

\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

[Intentionally Left Blank]

**II. STANDARD PROVISIONING PRICING.**

|  | Interval | FOC | Non-Recurring Charge |
|--|----------|-----|----------------------|
| Installation                           | *****    |     |                      |
| Move (Internal Move)                   |          |     |                      |
| Relocation (External Move)             |          |     |                      |
| Disconnect                             |          |     |                      |
| Hardware Removal as part of Disconnect |          |     |                      |
| Change Order                           |          |     |                      |

NOTES: Each provisioning interval shall begin upon WorldCom receipt of a complete and accurate order from Nasdaq. Longer time periods for any activity may be agreed upon on an individual case basis by the parties.

WorldCom may invoice Nasdaq for any installation non-recurring charge no earlier than five (5) days following installation of the local access circuit.

Nasdaq agrees to use its reasonable efforts to assist WorldCom in the recovery of WorldCom equipment from a Subscriber's premises in the event the Subscriber disconnects service in connection with its discontinuance of operations.

\*This figure is a monthly average, and is calculated exclusive of delays caused by Subscriber (e.g., failure to extend demarc).

\*\*WorldCom and Nasdaq will coordinate the removal of Components within a three-day period.

Additional Charges:

Nasdaq shall be charged \*\*\*\*\* for each Expedite, if the Expedite is requested within the period specified for any Interval.

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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Definitions:

FOC – Firm Order Commitment – the maximum number of WorldCom Days from the date WorldCom receives Nasdaq's order for the Service until WorldCom notifies Nasdaq of its firm commitment to all dates involving Subscriber or Corporation premises visits.

ICB – To be determined on an individual case basis.

Interval – The number of WorldCom Days from the date WorldCom receives the order from Nasdaq within which the service will be completed.

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## ATTACHMENT 11

### Appendix F

[See following pages]

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## APPENDIX F

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

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## ATTACHMENT 14

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

**ATTACHMENT 15**

**Network Diagram**

**(as of implementation of 2<sup>nd</sup> Amendment to Agreement)**

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\*\*\*\*\* Confidential Treatment has been requested for the redacted portions. The confidential redacted portions have been filed separately with the Securities and Exchange Commission.

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350,  
as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of The Nasdaq Stock Market, Inc. (the "Company") for the quarterly period ending September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Hardwick Simmons, as Chairman and Chief Executive Officer of the Company, and David P. Warren, as Executive Vice President and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Hardwick Simmons

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Name: Hardwick Simmons

Title: Chairman and Chief Executive Officer

Date: November 14, 2002

/s/ David P. Warren

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Name: David P. Warren

Title: Executive Vice President and Chief Financial Officer

Date: November 14, 2002

This certification accompanies the Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.

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