that provides substance to the term equivalent price protection.[29]

First, a member firm holding a protectible customer limit order [30] outside of NAqcess must provide such order with print protection, if any transaction at a price inferior to the customer limit order occurs.[31] Thus, any firm holding a protectible customer limit order is required to contemporaneously execute, up to the size of the reported transaction, the customer limit order at the limit order price if an inferior-priced execution is reported in that security. "Contemporaneously" means within approximately 60 seconds of the trade report. For example, firms A and B each hold 1,000 share customer limit orders to buy priced at 20⅛. A 1,000 share trade is reported at 20. Both firms A and B are obligated to execute their limit orders at 20⅛ within 60 seconds of the trade report. If the triggering trade report had been 500 shares at 20, each firm owed its customers executions of at least 500 shares at 20⅛.

Next, if the firm holds a protectible customer limit order at a price that would match a limit order in the NAqcess file, the firm must either execute its limit order or send its limit order to NAqcess for matching. "Matching" means that the NAqcess limit order is the same price or lower than the firm's customer's limit order to buy or higher than the limit order to sell.

The same matching would be required if the firm holds offsetting limit orders within its own file. If the firm holds a limit order to sell at 20¼ and accepts

a limit order to buy at 20¼ or higher, the firm must execute the two orders against each other. Finally, if the firm holds a limit order that is priced equal to or better than the inside market in Nasdaq, and if the firm accepts a customer market order for automated execution at the inside market, the firm must first match the market order against the limit order before it can execute the market order for its own account.

4. NAqcess Proposal—Consistent With Securities Exchange Act

The proposed NAqcess system and the accompanying proposed rule changes in the Rules of Fair Practice propose significant structural changes in The Nasdaq Stock Market that greatly benefit investors in their handling of limit orders, price improvement over the dealer quotation, and rapid execution of orders. It is important to note that no previous proposal for a Nasdaq order handling and execution system has been so interrelated with such significant changes to rules that provide price protection across the Nasdaq market. The two developments—a new system with advanced order matching features and greater transparency along with the dramatic changes to price protection of orders in and outside the system—must be considered as a part of a fully integrated approach to the handling of retail customer orders. Together, they permit retail investors greater opportunity to participate directly in the market through the use of limit orders and substantially increase their ability to receive executions between the best dealer bid and offer. Further, the NASD believes that the approach to changes in The Nasdaq Stock Market proposed in this rule filing helps to guarantee investor protection and fairness to all market participants, while still allowing the market makers to operate in a competitive dealer market. The enhanced price discovery features, the transparency of limit orders, and the interaction of limit orders and market orders should add to the liquidity, efficiency and immediacy of Nasdaq's competing dealer market structure.

Accordingly, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) requires the NASD to formulate rules governing the quality of fair and informative quotations. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure economically efficient execution of securities transactions. The fundamental purpose of NAqcess is to assist investors in achieving prompt, efficient executions of their small orders and to provide an opportunity for price improvement over the dealer quotation within an automated execution environment. The integrity and efficiency of Nasdaq for public investors and market-making participants is critical and the NASD believes that NAqcess will provide benefits to both constituencies. The design of NAqcess is not anti-competitive as it treats all non-directed orders uniformly; to the extent that directed orders are distinguished, by entering into such arrangements with known customers, market makers effectively waive the protections offered by the system.

The new proposals are also fully consistent with the significant national market system objectives contained in Section 11A of the Act. The NAqcess national limit order facility would advance these objectives by offering efficient execution of investors' small orders, by maintaining market maker participation through the automated delivery of orders with the ability to reject those orders if trades have already occurred, and by offering the opportunity for price improvement over the dealer quotation to orders both inside and outside of the NAqcess system. The system's functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, without depriving market makers of legitimate exceptions from the firmness requirements contained in Rule 11Ac1–1. In sum, the NASD believes that the entire proposal set forth herein significantly advances the goals of investor protection and greater access to The Nasdaq Stock Market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any

---

[29] The equivalent price protection Interpretation would not apply to continuous trading systems, such as that operated by Instinet, because such customers are generally sophisticated and have deliberately opted to trade in an alternative trading system. Such customers are institutions and broker-dealers that seek other advantages in trading in these alternative systems. Because of their sophistication, these customers believe they do not need the broker-dealer operating the system to provide equivalent price protection. Accordingly, the NASD will provide an exemption from the Interpretation to brokers operating such systems if they seek an exemption.

[30] A "protectible" order is a customer order of a size that would be eligible for entry into NAqcess. Accordingly, the Interpretation requirements do not extend to customer limit orders that are larger than 1,000 shares (or larger than 3,000 shares for Nasdaq 100 securities).

[31] A member's obligation to provide print protection will not be triggered by a trade report that has a special modifier, such as .SLD or otherwise, appended to it. Because such modifiers indicate the trade being reported is out of sequence or was executed under special conditions, such trade reports should not require an execution of a limit order. The NASD will closely monitor member's usage of special trade reporting modifiers to ensure that firms to not use such modifiers as a vehicle to avoid print protection obligations under the new rule.